

THE ORGANISATION OF ASYLUM AND MIGRATION POLICIES IN THE NETHERLANDS



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EXECUTIVE SUMMARY

The EMN Study on 'The Organisation of Asylum and Migration Policies in the Netherlands' provides a compact and complete overview of the manner in which the implementation of asylum and migration policies is organised in the Netherlands as at 1 July 2012. This Study also includes a description of the developments that occurred in the course of 2010 and 2011. This report is an update of the EMN Report from 2009 of the same name.

The study is a unique reference work, as such an overall overview has never been provided in a single report elsewhere. In addition, no prior knowledge of asylum and migration policies is required when consulting this report. The report is therefore not only suitable for experienced policy officers who wish to read about the organisation of asylum and migration policies, but also for actors new to this field and other interested parties, because the report will enable them to quickly and easily become acquainted with the field of asylum and migration. On the basis of this report and similar reports issued by the other EU Member States, the European Migration Network will update the Synthesis Report.

The introduction in Section 1 is followed by an overview of the political, legislative, and institutional system in the Netherlands in Section 2. The general description of the political system is followed by a detailed description of the most important political institutions that fulfil a role in asylum and migration policies. In the Netherlands, the Ministry of Justice used to fulfil the most prominent role, as this Ministry was responsible for asylum and migration policies. After the elections in 2010 and the subsequent formation of the government, the new government transferred this responsibility to the Ministry of the Interior and Kingdom Relations in October 2010. In addition, other Ministries are active in the field of asylum and migration, including the Ministry of Foreign Affairs, the Ministry of Defence, and the Ministry of Social Affairs and Employment. This report specifies, for each Ministry, the departments that fulfil an important role in this field. Subsequently, a general description is provided of the legal system, with attention being paid to relevant legislation in the area of asylum and migration. Finally, a short overview is provided of non-governmental organisations (NGOs) that fulfil a formal role in asylum and migration policies.

Section 3 provides a short historical overview of the major developments with respect to manner in which the Netherlands has regulated asylum and migration. In this context, specific attention is paid to the developments in relation to the Aliens Act. The first Aliens Act to regulate the migration of third-country nationals dates from 1849. At the time, this Act served as a buffer against the arrival of foreign tramps and beggars, in order to reduce insecurity in the country. From that time on, third-country nationals have been obliged to report to the police upon arrival and upon departure. This Aliens Act was not revised until 1965, in order to regulate the entry and removal of third-country nationals by law. The Aliens Act 1965 improved the legal position of the third-

country nationals, as two types of permits were laid down in law by this Act, one of which was the permit to stay in the Netherlands. The Aliens Act was revised again in 1994 and 2000; this time to regulate the considerable increase in the number of asylum applications. The Aliens Act 2000 is still the most important Act in the area of asylum and migration. This Section also provides a description of the post-war waves of migration that occurred in the Netherlands, which is followed by a more detailed discussion of migration for the purposes of family reunification, study, labour, and asylum.

Section 4 describes the manner in which asylum and migration policies are currently organised. This Section deals successively with the procedures for entry, admission, lawful residence, access to the labour market, and the departure of third-country nationals. Except in the subsection on departure, the discussion of the procedures is broken down into asylum policy on the one hand and migration policy on the other hand.

One of the most important recent changes has been the amended asylum procedure which was introduced in 2010. The amended procedure relates, among other things, to the introduction of a rest and preparation period of at least six days prior to submitting the asylum application.

The description of the procedures also indicates the magnitude of the contribution of the different institutions to the implementation of the policies. The Royal Netherlands Marechaussee and the Seaport Police are, for instance, charged with border control (entry) and the Immigration and Naturalisation Service (IND) is responsible for assessing the applications for residence permits (lawful residence). The Repatriation and Departure Service coordinates the departure of third-country nationals who are not – or no longer – permitted to stay in the Netherlands. Following the description of the procedures, Section 4 also deals with the policy areas linked to asylum and migration policies, namely integration policy, labour market policy, and migration and development policy.

Political bodies have made policy proposals to improve the current asylum and migration systems. The last Section deals with the most important changes to migration policy that will take effect in the near future. The so-called Modern Migration Policy is aimed at realising a sustainable migration policy that will provide fast and efficient entry to those migrants needed most by the Netherlands. A simplified system of types of applications for residence permits is being developed to realise this aim.

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1 INTRODUCTION

In 2008/2009, the National Contact Points of the European Migration Network (EMN) provided an overview – for the first time in its history – of the organisation of the asylum and migration policies in the different EU Member States. National Contact Points may decide to update their report if they see cause to do so. Considering the major developments in this area, in particular since October 2010, the report issued previously by the Dutch National Contact Point requires an update.

The EMN is an initiative of the European Commission and has its legal basis in Council Decision 2008/381/EC of 14 May 2008. The objective of the EMN is to meet the information needs of the authorities and institutions of the Member States in the area of asylum and migration by providing up-to-date, objective, reliable, and comparable information, with a view to supporting the policy-making process in the European Union in these areas. The EMN also serves to provide the general public with such information. The Dutch National Contact Point (NCP) is placed under the Information and Analysis Centre of the Immigration and Naturalisation Service (INDIAC).

The studies written by the different National Contact Points (NCPs) provide an overview of the organisation of asylum and migration policies in the EU Member States. Specific attention is paid to the institutional context, which describes the institutions that contribute significantly to the asylum and migration systems, and the way in which these organisations are interrelated. In addition, attention is paid to legislation and regulations, and to asylum and migration procedures. The European Commission combines the results of the different country studies in a Synthesis Report.

The EMN Study on 'The Organisation of Asylum and Migration Policies in the Netherlands' provides a compact and complete overview of the manner in which the implementation of asylum and migration policies is organised in the Netherlands. The study is a unique reference work, as such an overall overview has never been provided in a single report elsewhere. In addition, no prior knowledge of asylum and migration policies is required when consulting this report. The report is therefore not only suitable for experienced policy officers who wish to read about the organisation of asylum and migration policies, but also for new actors in this field, because the report will enable them to quickly and easily become acquainted with the field of asylum and migration. This report is an update of the EMN Report from 2009 of the same name.¹

This Dutch study reflects the situation on 1 July 2012. Section 2 provides an overview of the organisation of the political system, the institutional context and the legal system in the Netherlands. Section 3 provides a brief description of the major historical developments in the asylum and migration systems. Section 4 subsequently provides an explanation of the organisation of asylum and migration policies in the Netherlands from an institutional perspective. This Section also describes the procedures for entry, admission,

1 See INDIAC-NL EMN NCP 2009.

lawful residence, access to the labour market, and return. Finally, Section 5 provides an analysis of the asylum and migration systems described.

The structure of this EMN Study is based on the study design as developed by the European Commission and the EMN NCPs. The fact that all EMN NCP reports are written on the basis of a common structure will facilitate the comparison of the organisation of asylum and migration policies in the same time frame in the different EU Member States.

This Dutch EMN Study was drafted in 2010 by N.M.H. Chin-A-Fat and S.A. Alisentono. The developments of 2011 were processed and incorporated into the report by M. van Heijgen, and those of 2012 by H. Wörmann and R.E. Engelsman, all three employed by INDIAC. The data for this study were collected by means of desk research. The information collected was derived, in particular, from different internet sources. In order to obtain information about the different organisations, for instance, the websites of the relevant organisations were consulted. In order to obtain substantive and procedural information, we consulted the Dutch Aliens Law as described by Kuijter et al. (2005), the Aliens Act 2000, the Alien Decree 2000, and the Aliens Act Implementation Guidelines 2000. Please consult the reference list for a complete overview of the sources used.

The input and feedback from the relevant employees of the different organisations were indispensable. We want to thank the information providers of the Implementation and Advice Departments of the Directorate for Implementation Strategy and Advice of the IND, the Royal Netherlands Marechaussee, the Repatriation and Departure Service, the Ministry of Foreign Affairs, the Ministry of Social Affairs and Employment, and the Directorate for Migration Policy of the Ministry of the Interior and Kingdom Relations.

2 OVERVIEW OF THE ORGANISATION OF THE POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN THE NETHERLANDS

This Section provides a general overview of the organisation of the political, institutional, and legal systems in the area of asylum and migration in the Netherlands. Firstly, a description of the political system in the Netherlands is provided. Secondly, the institutional context is dealt with, including an overview of the most important government institutions and organisations that fulfil a role in asylum and migration policies. Subsequently, an overview is provided of the legal system in the Netherlands. The description of the structure of the legal system is limited to the area of asylum and migration, and includes an overview of the relevant legislation and regulations and the major actors. Finally, a short description is provided of non-governmental organisations that fulfil a procedural role in asylum and migration policies.

2.1 The political system in the Netherlands

The Netherlands is a constitutional monarchy, of which Her Majesty Queen Beatrix is currently head of state. The Dutch political system is a parliamentary system. Parliament is elected by proportional representation by the Dutch population of 18 years of age and older, and is deemed to represent the entire Dutch nation. The King and the Ministers together constitute the government.² At the national level, the administrative power rests with the Ministers. Each Minister has political responsibility for a certain policy area, and may be assisted by Secretaries of State, who are entrusted with a specific policy area. The parliamentary system is characterised by two important principles. The first principle is the ministerial responsibility, which implies that the King can do no wrong, and that the Ministers are politically responsible for the King's actions. The second principle is the rule of confidence. This rule implies that the government requires the support of Parliament. Parliament may withdraw its confidence in a Minister, a State Secretary, or in the entire government, which results respectively in the resignation of the relevant person(s) or in the resignation of the entire government.

Parliament consists of the Senate and the House of Representatives (together referred to as 'the States General'), and its main tasks are legislation and control. All Bills submitted by the government must have been adopted by Parliament before they obtain legal force. The Members of the House of Representatives also have the right to submit Bills, and they also have the power to amend government Bills. In order to be able to perform

2 In constitutional terms, only the term 'King' is used.

its control function, each Member of the House of Representatives may put oral and written questions to a Minister or State Secretary. All Members of the House of Representatives may also submit a motion containing a desire or opinion in relation to government policy pursued or yet to be pursued. The powers of the Senate differ from those of the House of Representatives. Members of the Senate do not have the possibility of initiating or amending Bills, neither do they have the right to ask oral questions.³

The Netherlands, together with the Caribbean islands of Aruba, Curaçao, and Saint Maarten, forms the Kingdom of the Netherlands. The islands of Bonaire, Saba, and Saint Eustatius are special municipalities of the Netherlands. Each of the four countries in the Kingdom (the Netherlands, Aruba, Curaçao, and Saint Maarten) has its own government and Parliament. In the Charter for the Kingdom of the Netherlands, a limited number of issues have been indicated on which the bodies of the individual countries do not have any say of their own, but for which the relevant powers have been conferred on bodies within the Kingdom. These issues include defence, foreign relations, and the regulations concerning Dutch nationality. The nationals of the four countries hold Dutch nationality.⁴

The Netherlands has several **High Councils of State**. These bodies are regulated by the Constitution, each charged with its own tasks, which they carry out independently of the government. The High Councils of State are the States General, the Netherlands Court of Audit, the Council of State, and the National Ombudsman. The last two institutions are of special importance to asylum and migration policies.

The Council of State is an independent advisory body of the government on legislation and governmental decrees, and it is the highest administrative court of the Netherlands. The working procedure and tasks of the Council of State have been laid down in the Constitution and in the Council of State Act. The Queen is President of the Council of State. The Vice-President is in charge of the day-to-day management.⁵ In addition to being an advisory body of the government, the Council of State is also the highest administrative court in asylum cases and aliens detention.

The National Ombudsman is an independent official who deals with complaints of citizens about improper government actions. He or she is appointed by the House of Representatives for a period of 6 years. Since 1 January 2006, the National Ombudsman not only deals with complaints about the central government, but also handles issues regarding actions of administrative bodies of local authorities, unless the administrative body has decided submit its incoming complaints to a different ombudsman. The National Ombudsman deals with complaints about individual cases that cannot be appealed to the court. The National Ombudsman publishes his conclusions in reports and in annual reports, which are also available through the Internet. The National Ombudsman is not a judge, and the government is not obliged to attach consequences to his decisions. The decisions of the National Ombudsman, however, do have a great effect in terms of publicity and leverage through its the weight of its opinion with regard to specific issues.

3 Neelen et al. 1999.

4 This report pertains only to the European part of the Netherlands.

5 Derived from www.raadvanstate.nl

2.2 The institutional context in the Netherlands

In the Netherlands, different Ministries play a role in the implementation of asylum and migration policies.⁶ With the investiture of the new Rutte Government in 2010 and the establishment of a new Coalition Agreement, various portfolios were transferred from one Ministry to another Ministry.⁷ The responsibilities of the former Ministry of Justice included, for instance, the policy for and processing of the entry of third-country nationals into the Netherlands, the tasks regarding the Netherlands Nationality Act (naturalisation), and the return of third-country nationals who were not permitted to stay in the Netherlands. Within the Ministry of Justice, the State Secretary for Justice was responsible for the subareas of asylum and migration policies. Since 14 October 2010, the issues of asylum and migration have been the responsibility of the Ministry of the Interior and Kingdom Relations, with a Minister without portfolio for Immigration, Integration and Asylum.⁸ The Security Portfolio was transferred from the Ministry of the Interior and Kingdom Relations to the Ministry of Security and Justice. This Section provides an overview of the institutions which have a leading role in public administration in the area of asylum and migration.

The Ministry of the Interior and Kingdom Relations

Just like any other Ministry, the **Ministry of the Interior and Kingdom Relations** consists of branches that are engaged in policy development, the so-called Directorates General. Each Directorate General (DG) is dedicated to a specific policy sector. A DG is in its turn divided into different directorates and services. The issue of asylum and migration comes under the DG for Aliens Affairs. The issue of integration comes under the DG for Housing, Construction, and Integration. In addition to the DGs, a number of institutions play a role in the implementation of the asylum and migration policies.⁹

The **Minister for Immigration, Integration and Asylum** has overall responsibility for Dutch immigration policy, for the coordination and synchronisation in the immigration process, and for the implementation of this policy. The Minister is responsible for the following implementing bodies: the Central Agency for the Reception of Asylum Seekers (COA), the Immigration and Naturalisation Service (IND), and the Repatriation and Departure Service (DT&V). These implementing bodies fall directly under the responsi-

6 This is also reflected in the organisation chart for Immigration and Asylum Policy, see Annex 1.

7 On 23 April 2012, Prime Minister Rutte rendered the resignation of this government to the Queen. This has resulted in the fact that the government is currently outgoing. The elections to the House of Representatives will be held on 12 September 2012.

8 By government decision of 16 December 2011, the Minister for Immigration, Integration and Asylum is also charged with civic integration and the coordination of the integration of minorities. As a result of this, the title of the Minister changed, as well. Until that date, the Minister of the Interior and Kingdom Relations had been charged with civic integration, and the coordination of the integration of minorities.

9 An institution is a part of a Ministry that is subject to a management that diverges, in part, from the general management rules for government branches. As a result of the divergent management rules, the institutions have, in principle, more possibilities of allocating human and financial resources, and they have better insight into the costs of their products and services. The ministerial responsibility and the right of the House of Representatives to approve and amend budgetary policy apply fully to the institutions. Examples of such institutions are: The Repatriation and Departure Service; the Immigration and Naturalisation Service, and the General Intelligence and Security Service.

bility of the Ministry of the Interior and Kingdom Relations. The Minister furthermore maintains a relationship of authority with the Royal Netherlands Marechaussee, the Aliens Police, and the Seaport Police. With regard to aliens detention and the removal centres of the Custodial Institutions Agency (DJI), the Minister bears policy responsibility.¹⁰

The **Immigration Policy Department (DMB)** is responsible for developing national and international policies for entry, stay and return of third-country nationals. The Directorate is furthermore responsible for ensuring that the policies can be implemented effectively by the relevant implementing bodies. The DMB also supports the horizontal and vertical management of organisations that fulfil a formal role in asylum and migration policies, among other things by providing information that is relevant to the cooperating organisations.

The **Repatriation and Departure Service (DT&V)** is a support service of the Ministry of the Interior and Kingdom Relations and coordinates the voluntary and forced return of third-country nationals who are not permitted to stay in the Netherlands. In practice, the DT&V focuses on two target groups:

- Irregular migrants who have been apprehended in the context of internal supervision of third-country nationals (mobile or otherwise) and third-country nationals who have been refused entry in the context of border control.
- Asylum seekers who have exhausted all legal remedies and who must leave the country.¹¹

The **Immigration and Naturalisation Service (IND)** is responsible for the implementation of Dutch immigration policy. This means that the IND assesses all applications submitted by third-country nationals who wish to stay in the Netherlands or who wish to become Dutch citizens. The third-country nationals concerned may be refugees who are not safe in their own country; people who want to live and work in the Netherlands; or people who wish to naturalise.

The IND is an institution of the Ministry of the Interior and Kingdom Relations. The Minister for Immigration, Integration and Asylum is responsible for the implementation of the Aliens Act. The Minister of the Interior and Kingdom Relations is responsible for the implementation of the Netherlands Nationality Act. The IND is an implementing body, and is consequently not responsible for the substance of the policy or the applicable conditions. Dutch immigration policy is determined by the government, the Senate, and the House of Representatives. The IND fulfils an important government task by ensuring that Dutch immigration policy is implemented accurately.

The IND deals with three types of applications:

1. Managed migration: applications for regular residence permits to live, study, and work in the Netherlands. A third-country national who wishes to come to the Nether-

¹⁰ *Parliamentary Papers II* 2011/2012, 33000, no. 2.

¹¹ For more information about the Repatriation and Departure Service see <http://english.dienstterugkeerenvertrek.nl/>.

lands for a short stay (maximum period of 3 months, for instance, for a family visit or as a tourist) will need a visa, depending on his nationality. He can apply for this short-stay visa at the Dutch embassy or consulate in his own country or the country of continuous residence. A third-country national who wants to stay in the Netherlands for more than three months must usually first apply for a Regular Provisional Residence Permit (MVV). He can apply for this short-stay visa at the Dutch embassy or consulate in his own country or the country of continuous residence. This MVV will permit the third-country national to enter the Netherlands. In many cases, the person or organisation receiving the third-country national in the Netherlands may also initiate the procedure. The IND decides on the MVV application on behalf of the Ministry of Foreign Affairs, and sends the decision to the embassy or consulate. The embassy or consulate will subsequently issue the MVV to the third-country national. Only in a few cases does the IND itself decide on applications for a short-stay visa.¹²

2. Asylum: applications from third-country nationals who request the Dutch government to protect them, for instance, against prosecution in their country of origin.
3. Naturalisation: applications for the acquisition of Dutch nationality. A third-country national who wishes to acquire Dutch nationality will have to satisfy a number of conditions. This subject will be discussed in 4.4.

Handling the above-mentioned applications also involves other organisations, such as municipalities, the Ministry of Foreign Affairs, the Aliens Police, the Repatriation and Departure Service, the Ministry of Social Affairs and Employment, the Central Agency for the Reception of Asylum Seekers, and the Royal Netherlands Marechaussee.

The **Integration and Society Departement** comes under the DG for Housing, Building, and Integration and is responsible for a coherent and nation-wide integration policy. Integration policy is about participation. This is the key to full integration, for newcomers as well as people who have lived in the Netherlands for some time. This concerns work, schooling, and adequate housing, for example. Dutch policy is aimed at equipping people to participate in society by helping them take their own responsibility for this participation.

This Department has three main objectives: the integration of migrants, the social participation of migrants, and the social and cultural integration of migrants. The Integration and Society Department initiates, develops, and maintains contact with relevant Ministries, municipalities, implementing organisations, migrant organisations, research and knowledge institutes, citizens and civil society organisations, and organisations that operate internationally. This Department works together with local authorities on the basis of a common integration agenda.

The **General Intelligence and Security Service (AIVD)** is an institution of the Ministry of the Interior and Kingdom Relations, and provides data to the IND that may be of importance for the assessment of applications submitted by third-country nationals who wish to stay in the Netherlands or who wish to acquire Dutch nationality. The data may relate

12 See also the information about the Consular Affairs and Migration Policy Department (Section 2.2).

to persons or organisations, if this is important for reasons of national security. The AIVD provides the data in the form of a person-specific report. The IND may issue an expulsion order against third-country nationals on the basis of person-specific reports issued by the AIVD.¹³ This expulsion order is a measure aimed at ensuring that third-country nationals who are not – or no longer – permitted to stay in the Netherlands are barred from entering or staying in the Netherlands.

Municipalities have their own competence with regard to the tasks related to activities in their territory. They are competent, for instance, to lay down rules — which apply only in their territory — independently and on their own initiative. In its capacity as a supervisory body, the Ministry has, however, the right to reverse decisions of local authorities when they are in conflict with the law or with government policy. In practice, however, the Ministry of the Interior and Kingdom Relations uses this right sparingly: this right has been deployed, with regard to all issues, in only several dozen cases per year.¹⁴

Municipalities are responsible for housing the holders of asylum residence permits, handling option applications submitted by persons who wish to acquire Dutch nationality, and taking receipt of applications for naturalisation.¹⁵ The municipalities furthermore enter the personal data of everyone who lives or lived in the Netherlands in the Municipal Personal Records Database. Everyone who lives in the Netherlands is obliged to register in this Database. It is also the task of the municipalities to ensure the integration and participation of non-native Dutch population groups, and to implement national asylum policy at the local level. The interests of the municipalities are represented by the Association of Netherlands Municipalities. This Association furthermore has an advisory function towards the municipalities about current developments, and it serves as a platform for all Dutch municipalities.¹⁶

The **Advisory Committee on Migration Affairs (ACVZ)** is an independent advisory body that gives solicited and unsolicited advice to the government and Parliament on policies and legislation in the area of aliens law and immigration policy. As the Minister for Immigration, Integration and Asylum is charged with the immigration portfolio, in practice most advice is directed primarily to this Minister. The ACVZ is a permanent advisory body within the meaning of the Advisory Bodies Framework Act, and was established by the Aliens Act 2000. The ACVZ bases its advice on analyses of the policies pursued and on existing legislation. It examines whether the policy or the legislation concerned has been efficient and effective. If necessary, the ACVZ makes recommendations for improvement. The ACVZ also issues advisory reports with respect to future developments. In these advisory reports, the ACVZ incorporates alternative directions for policies and for the relevant legislation. The Minister for Immigration, Integration and Asylum informs both Houses of the States General of the government's point of view on the policy advisory report within three months of receipt of the advisory report.¹⁷

13 Dutch Government Gazette 2003 no. 115.

14 Neelen et al. 1999.

15 The applications for naturalisation are handled by the IND.

16 For more information, see www.vng.nl.

17 For more information, see www.acvz.org.

The Ministry of Security and Justice

The **Ministry of Security and Justice** is responsible for the Dutch rule of law, so as to ensure that people can live together in freedom in Dutch society. To realise this, the Ministry of Security and Justice takes various measures, including those aimed at providing people legal protection.

The **Dutch Police** play a major role in ensuring public security and protection. The police are responsible for policing the streets and for maintaining public order there. They render assistance to citizens and they investigate punishable offences. The police are organised in 26 forces, and are primarily organised locally. There is one national police force: the Netherlands Police Agency (KLPD), which falls directly under the responsibility of the Minister of Security and Justice. In addition, there are 25 regional police forces.¹⁸ Each region is administered by a regional board consisting of the mayors of the municipalities in the region concerned and the chief public prosecutor. This board is chaired by the regional police force manager, usually the mayor of the largest municipality in the region concerned. It is the responsibility of the regional police force manager to ensure that the police force is sufficiently staffed, efficiently organised, and properly equipped, in order to enable it to perform its tasks in a satisfactory manner.¹⁹

Within the KLPD, two services have initiated a partnership in order to tackle human trafficking and the smuggling of migrants. In the fight against (international) serious organised crime, the tasks of the National Criminal Investigation Service (DNR) are criminal investigation, development of expertise, and national and international information exchange. The Department of International Police Information (IPOL) is the information and analysis centre of and for the Dutch police and its partners in the area of crime control, public order, and security. These services initiated the establishment of the Expertise Centre for Human Trafficking and Human Smuggling (EMM), which is a partnership between the National Criminal Intelligence Service and the Department of International Police Information and the Royal Netherlands Marechaussee (see under the heading 'Ministry of Defence'), the IND, and the former Social Intelligence and Investigation Service (SIOD).²⁰ Together they are trained specifically in recognising signs of human trafficking and the smuggling of migrants.

In addition, there are three more actors within the police force who fulfil an important role in the area of asylum and migration, namely the Aliens Police, the Seaport Police, and the Aliens Police Support Service.

18 The government wants to abolish the current police forces and establish one national police agency/corps/force, consisting of 10 regional units, under the responsibility of the Minister of Security and Justice. A Bill to this end was submitted by the Minister of Security and Justice, and agreed by the Council of Ministers. The House of Representatives also agreed to amend the Police Act to this end. The national police force/agency/corps can be introduced as soon as the Senate has also agreed to the Bill amending the Police Act. The Senate will debate this Bill in 2012. The national police force/corps/agency is expected to begin operations in the middle of 2012.

19 For more information, see www.politie.nl.

20 The Social Affairs and Employment Inspectorate (Inspectorate SZW) began its operations on 1 January 2012. The Inspectorate SZW is a merger of the organisations and activities of the former Labour Inspectorate, the Work and Income Inspectorate, and the Social Security Intelligence and Investigation Service of the Ministry of Social Affairs and Employment.

1. The units of the Aliens Police are part of the various regional police forces, and are engaged in monitoring the lawful residence of third-country nationals. The Aliens Police also fulfil a role in the removal of third-country nationals whose applications for a residence permit have been refused definitively, and in the registration of asylum seekers in application centres (see Section 4.2.1).
2. The Seaport Police are part of the Rotterdam-Rijnmond Regional Police Force and are responsible for border control in the Rotterdam port area. Border control means checking people who want to cross the Dutch border. The Seaport Police are authorised to grant visas at the border if the third-country national is able to prove that urgent reasons and unforeseen circumstances have prevented him from applying for a visa prior to his coming to the Netherlands.
3. The Aliens Police Support Service (TOV) operates nationally and gives advice and support to the Dutch police in developing the view, strategy, and policy in the immigration policing of the police forces. It contributes to the professionalisation of the operations and, in particular, to the improvement of the quality of the business processes. In this context, the Aliens Police Support Service involves the cooperating organisations in the immigration process. The Aliens Police Support Service is also the national contact point for the representation of the interests of the immigration services. It is a node in the communication and information exchange among the immigration services themselves, and from cooperating organisation to cooperating organisation.

The **Research and Documentation Centre (WODC)** is an institution that falls under the Secretary General of the Ministry of Security and Justice. The WODC is charged with conducting in-house research and commissioning external research, including the evaluation of policies and policy programmes, and with providing recommendations about intended policies and policy programmes, developing and updating data and making data available, and disseminating the knowledge and documentation of scientific and social scientific publications in the area of Security and Justice that are available at the WODC. The WODC consists of different research divisions, including the Justice Administration, Legislation, International and Aliens Affairs Division (RWI)²¹

The tasks of the **Correctional Institutions Agency (DJI)**, which operates as an institution under the responsibility of the Ministry of Security and Justice, include the enforcement of sanctions and custodial orders. The Special Facilities Department of the DJI is specifically responsible for irregular migrants and third-country nationals who have been refused entry at the border. The Special Facilities Department has detention facilities.²²

The Ministry of Defence

Part of the Ministry of Defence is the **Royal Marechaussee (KMar)**. The Royal Marechaussee is a police organisation with military status and has a wide range of tasks in the context of national and international security. As one of the institutions that are

²¹ For more information, see www.wodc.nl.

²² For more information, see www.dji.nl.

responsible for the implementation of the Aliens Act, the Royal Marechaussee has the following tasks:

- Border control at airports and seaports, with the exception of the Rotterdam port area (the Rotterdam port area is the responsibility of the Seaport Police);
- Providing assistance in asylum procedures of asylum seekers who apply for asylum immediately at the border, including document analysis;
- Granting visas (just like the Seaport Police) at the border if the third-country national is able to prove that urgent reasons and unforeseen circumstances have prevented him from applying for a visa prior to his coming to the Netherlands;
- Participating in the Coastguard Centre to combat illegal immigration over sea;
- Performing Mobile Security Monitoring at the internal borders. In the Netherlands, the Royal Marechaussee has been charged with Mobile Security Monitoring at the internal borders with Belgium and Germany since May 1994. The purpose of these controls is to tackle illegal immigration and all forms of crime. Mobile Security Monitoring is directed towards travellers who enter the Netherlands from another Schengen country. Travel document checks are carried out in the area directly behind the border and random checks are carried out throughout the Netherlands, on the roads, in the trains, on water, and at air traffic.
- Escorting irregular migrants in forced returns and the transfer of third-country nationals to foreign authorities;
- Escorting persons by air for the purpose of the Enforcement of Criminal Judgments (Transfer) Act and on the instructions of the Public Prosecution Service (escorting Dutch citizens who have been declared undesirable abroad).²³

The Ministry of Foreign Affairs

The **Ministry of Foreign Affairs** is primarily responsible for Dutch foreign policy. The main divisions of this Ministry that fulfil an important role in the implementation of asylum and migration policies are the diplomatic missions and the Consular Affairs and Migration Policy Department.

The **diplomatic missions**: Worldwide, the Ministry of Foreign Affairs has more than 150 embassies, consulates, consulates general and permanent representations to international organisations. These representations are also referred to as 'diplomatic missions'. Before travelling to the Netherlands, third-country nationals can apply for a visa or for a Regular Provisional Residence Permit (MVV) at embassies and at a number of consulates and consulates general. Nearly all applications for short-stay visas are handled by the missions themselves. Applications for Regular Provisional Residence Permits are never handled by the missions themselves, but are sent to the IND. Third-country nationals who wish to acquire Dutch nationality abroad (e.g. because they are married to and cohabit with a Dutch national who lives abroad, as well) may submit their application for naturalisation to a mission. They can also take the compulsory civic integration examination abroad and attend the compulsory naturalisation ceremony there.²⁴

²³ For more information, see www.defensie.nl.

²⁴ For more information, see www.minbuza.nl.

The **Consular Affairs and Migration Policy Department (DCM)** provides consular services to Dutch nationals abroad, such as issuing passports and providing travel advice. The DCM also contributes to the regulation of the traffic of migrants. In this context, the DCM focuses primarily on third-country nationals who wish to come to the Netherlands. The tasks of the DCM include developing visa policy, assessing and handling visa applications, and facilitating the return of asylum seekers who have exhausted all legal remedies. The DCM is also responsible for issuing country reports and person-specific reports. The country reports contain relevant information, related to asylum-law, about the situation in the asylum seekers' country of origin, and are used to assess asylum applications.

The country report reflects the qualified opinion of the Minister of Foreign Affairs on the developments in a specific country, but does not contain any conclusions about immigration policy. The Ministry of the Interior and Kingdom Relations uses the reports to determine general policy regarding the relevant country, and the IND uses the reports as a source of information for decisions on individual asylum applications. The request for the compilation of a report is usually made by the Minister for Immigration, Integration and Asylum. There are three types of reports: A country report describes the political developments and security and human rights situation in a country and the situation of refugees in the region. A person-specific report gives answers to questions posed by the Ministry of the Interior and Kingdom Relations, in this case the IND, about an individual asylum seeker's account of his flight. A thematic report deals with a specific subject, for instance human trafficking.²⁵

The DCM also plays a role in the submission of visa applications. As stated above, nearly all visa applications are handled independently by the diplomatic missions themselves. The missions submit only a small number of the visa applications to the authorities in the Netherlands. The DCM handles visa applications submitted for business visits, conferences, seminars, sports and cultural events, international organisations, diplomats, political visits, and applications from persons from the former Soviet republics. The IND handles visa applications submitted for transit, tourism, family and personal visits, artists, students, trainees, and medical visits. The IND does not handle applications for the aforementioned purposes of residence from persons from the former Soviet republics; this is done by the DCM. Following the assessment by the DCM or the IND, the diplomatic missions themselves are responsible for issuing the visa or for communicating the decision that the application has been refused; in both cases the activity takes place at the diplomatic mission.²⁶

The Ministry of Social Affairs and Employment

The mission of the **Ministry of Social Affairs and Employment (SZW)** is to foster a socially and economically vigorous position for the Netherlands in Europe, with work and income security for everyone. The responsibilities of this Ministry include the employ-

25 Policy and Operations Evaluation Department Report 2012, no. 338.

26 See INDIAC – NL EMN NCP, 2012.

ment of third-country nationals in the Dutch labour market. The Labour Relations Department, which comes under the Directorate General for Employment of this Ministry, is responsible for the policy in the area of labour migration. This Department is also responsible for the enforcement policy of the Foreign Nationals (Employment) Act. The Inspector General heads the Social Affairs and Inspectorate SZW which also fulfils an important role in the area of labour migration.²⁷ The key tasks of the Inspectorate SZW are the supervision of compliance with the laws on minimum wage, allocation of labour by intermediaries, the Working Conditions Act, and the Working Hours Act. Other tasks of the Inspectorate SZW are the detection of fraud, exploitation and organised crime within the chain of work and income, and the identification of developments and risks in the field of work of Social Affairs and Employment. The Inspectorate SZW notifies the parties concerned of any irregularities detected.

Autonomous Administrative Authorities

In addition to the actors that fall directly under the responsibility of a Ministry, there are also several important actors that do not fall directly under such responsibility. As **Autonomous Administrative Authorities**, these actors do, however, perform government tasks that are part of the policy domain of a specific Ministry.²⁸ Important Autonomous Administrative Authorities are the Central Agency for the Reception of Asylum Seekers (COA), the Council for Legal Aid, and the Netherlands Employees Insurance Agency (UWV).

The **Central Agency for the Reception of Asylum Seekers (COA)** is responsible for the reception of asylum seekers and is an autonomous administrative authority. On the instructions of the Minister for Immigration, Integration and Asylum, the COA provides safe accommodation to asylum seekers who are in a vulnerable position, and assists them in preparing for their future, in the Netherlands or elsewhere. The COA deals, in particular, with asylum seekers and refugees, and with specific groups such as unaccompanied minors. The COA is an implementing body with reception centres throughout the Netherlands.²⁹

The **Council for Legal Aid** supervises and is responsible for the organisation of government-funded legal aid provided by the Legal Aid and Advice Centre, mediators, and lawyers. The Council is also responsible for the organisation of legal aid provided to asylum seekers during the asylum procedure.

As an autonomous administrative authority, the **Netherlands Employees Insurance Agency (UWV)** performs its tasks on the instruction of the Ministry of Social Affairs and Employment. The mission of the UWV is to ensure that as many people as possible continue to work or find paid work once again, as quickly as possible. The Minister of Social

27 The Inspectorate SZW began its operations on 1 January 2012. The Inspectorate SZW is a merger of the organisations and activities of the former Labour Inspectorate, the Work and Income Inspectorate, and the Social Security Intelligence and Investigation Service of the Ministry of Social Affairs and Employment.

28 An autonomous administrative authority is an administrative body of the central government, established by law, which independently performs specific government tasks. The Ministerial responsibility is limited to the management power.

29 For more information, see www.coa.nl.

Affairs and Employment has delegated the implementation of the Foreign Nationals (Employment) Act to the UWV. UWV WERKbedrijf is a division of the UWV which is charged, among other things, with the issue of work permits to employers who wish to employ third-country nationals in the Netherlands.³⁰

2.3 The legal system in the Netherlands

The Dutch legal system is hierarchically organised. This means that subordinate legal provisions do not apply if they are not compatible with higher legislation.

International treaties such as the Universal Declaration of Human Rights (UDHR) and the European Convention of Human Rights (ECHR) rank highest. Moreover, European Community Law, also referred to as *acquis communautaire*, can be appreciated as international law. The European Union has the power to issue Regulations and Directives. Regulations apply directly and are binding in all EU Member States, without requiring the adoption of transposing provisions by the Member State. Directives are binding to the Member States with regard to the result to be achieved within a specific period. In the case of Directives, however, the national authorities have the power to choose the form and means to achieve this result. The Directives must be transposed into national legislation in the individual Member States in accordance with the procedures.

International legislation is followed by the Dutch Constitution, the national laws and governmental decrees, and policy rules, respectively.

Parliament adopts national laws on the proposal of the government or a member of the House of Representatives. These laws may not be in conflict with the principles of the Dutch Constitution. The General Administrative Law Act furthermore provides for general rules of administrative law that serve as a guideline for administrative bodies. The General Administrative Law Act may be derogated from by special laws, such as the Aliens Act 2000.³¹ The most important laws in the area of asylum and migration are the following:

- The Aliens Act 2000, which regulates the conditions for entry and admission of third-country nationals to the Netherlands (including the asylum procedure), and for removal from the Netherlands;
- The Foreign Nationals (Employment) Act, which regulates the conditions for the employment of third-country nationals in the Dutch labour market;
- The Civic Integration Act and the Civic Integration Abroad Act, which oblige third-country nationals to integrate in the Netherlands, and in a number of cases, also prior to their arrival in the Netherlands.
- The Netherlands Nationality Act, which regulates the conditions for the acquisition and loss of Dutch nationality.

³⁰ For more information see www.uwv.nl.

³¹ Kuijter, A. (ed.), 2005.

In general, the laws usually provide the main features of principles that must be regulated in a specific area. The implementation of the laws is effected by different types of subordinate legislation, such as the governmental decrees. The most important governmental decree in the area of aliens law is the Aliens Decree 2000. The substantive rules and procedural rules of the Aliens Act 2000 are elaborated in the Aliens Decree 2000. Next in the hierarchical line are the ministerial regulations, which are set by a Minister. The difference between the preceding regulations and these types of regulations is that the Council of State is not consulted. The Aliens Regulations 2000 is a ministerial regulation which includes the administrative provisions and the models to be used by civil servants. The administrative body usually has some margin of appreciation in making a decision. In order to provide clarity about the substance of this decision space in advance, the administrative body may lay down policy rules to this end. The Aliens Act Implementation Guidelines 2000 contains the most important policy rules in the area of asylum and migration.³² The policy rules of the Aliens Act Implementation Guidelines 2000 laid down by the Minister for Immigration, Integration and Asylum are general and special orders to all civil servants who are charged with the implementation of aliens legislation.

Actors in the legal system

Within the legal system, two important bodies are engaged in the administration of justice in cases related to immigration policy. The first body is the Aliens Chamber, which focuses solely on hearing disputes in relation to aliens law. The Aliens Chamber forms part of the administrative law section at the Hague District Court. Formally, the Hague District Court is the only court to hear disputes in relation to aliens law. However, the hearings do not only take place in The Hague, but also at the so-called auxiliary locations. All nineteen District Courts in the Netherlands have Aliens Chambers. The Aliens Chamber hears appeals in aliens cases.³³

The second body is the Administrative Jurisdiction Division of the Council of State, which is the highest general administrative court in the Netherlands. This means that it is the highest court of justice that may render a judgment in disputes between citizens and the state, consequently also on cases under the Aliens Act 2000.

2.4 Organisations concerned

In addition to the actors mentioned above, a large variety of governmental and non-governmental organisations and institutions are active in the area of asylum and migration policies. Below, a description is provided of a selection of these organisations. The organisations described fulfil a formal role in asylum and migration policies.

The **International Organisation for Migration (IOM)** assists migrants in voluntary return to their country of origin and sustainable reintegration. The IOM also arranges the migration of invited refugees and family members that have received authorization to be reunited with their families in the Netherlands. In addition, the IOM arranges tempo-

³² Policy rule: A policy rule is a rule set by an administrative body assigning a specific power, and describing how this power is to be used. It is not a generally binding provision.

³³ Kuijer, A. (ed.), 2002.

rary outsourcing of highly qualified migrants to their country of origin to enable them to make their knowledge and experience available to local organisations.³⁴

Stichting Nidos works as an independent national guardianship and family guardianship organisation for unaccompanied minors. Immediately upon the arrival of an unaccompanied minor in the Netherlands, or if the authorities have found an unaccompanied minor present in the Netherlands without lawful residence, the unaccompanied minor is brought into contact with Nidos, which is responsible for providing accommodation for and taking custody of unaccompanied minors. For this purpose, Nidos submits an application for guardianship to the court. Once Nidos is awarded guardianship, Nidos gains the custody of the child. Nidos is authorised to look after the unaccompanied minor's interests during the asylum procedure, and it may be assisted by a lawyer in this procedure.

The **Dutch Council for Refugees** provides practical support to asylum seekers. It offers asylum seekers support during their asylum procedure and it helps them in realising family reunification.³⁵ The Dutch Council for Refugees looks after the interests of refugees and asylum seekers in the Netherlands, from the moment of arrival until integration in Dutch society.

MediFirst works on the instructions of the Immigration and Naturalisation Service (IND). Its activities are aimed specifically at giving medical advice with respect to interviews and decision-making in asylum applications. A fundamental component of this advice is a medical check of asylum seekers.

The nurses and doctors of MediFirst examine whether an asylum seeker is physically and mentally capable of participating in the interviews or whether this is prejudiced by medical problems. The results of the medical examination constitute an important basis for the further course of the IND procedure.

34 For more information, see www.iom.nl.

35 For more information, see www.vluchtelingenwerk.nl.

3 THE DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

This Annual Policy Report provides a brief historical overview of the most important developments in the area of asylum and migration. Specific attention is being paid to the developments in relation to the Aliens Act. This is followed by a description of the waves of migration that have occurred in the Netherlands in the period since World War II up to the present. Attention is also paid to family migration, labour migration, student migration, and asylum migration.

3.1 Development in the Aliens Act

The Netherlands has a long history of migration. The first Aliens Act to regulate the migration of foreign nationals dates from 1849. In this Act, a fundamental distinction was made – for the first time – between Dutch citizens and foreign nationals. The new Act served as a buffer against the arrival of foreign tramps and beggars, in order to reduce insecurity in the country. The Aliens Act of 1849 obliged foreign nationals to report to the police upon arrival and upon departure. If the police decided that the foreign national could be admitted, he or she would obtain a travel document and a residence card. In order to be admitted, the foreign nationals had to have sufficient means of existence or they were expected to obtain these through work. In addition, the foreign national had to be able to show a passport with a visa of the Dutch representative in the country of origin. Foreign nationals who had been admitted could be removed only through the intervention of the subdistrict court. Not all foreign nationals were obliged to report to the police in order to obtain a travel document and a residence card. Foreign nationals who were married or had been married to a Dutch woman and who had a child or children who had been born in the Netherlands were exempt from this obligation.³⁶

In order to regulate the admission and removal of foreign nationals by law, the Aliens Act of 1849 was revised in 1965. With the Aliens Act of 1965, the legal position of foreign nationals was improved, because the legal certainty of the different types of entitlement to residence, such as the residence permit and admission as a refugee, had now been laid down by law. The new Act also provided for cases in which permits could be refused. From then on, the removal of foreign nationals was bound by strict rules. This Act also regulated the legal remedies available to the foreign national. The revised Aliens Act entered into force in 1967.³⁷

Due to a considerable increase in the number of asylum applications, the Aliens Act was revised again in 1994. This increase in the number of asylum seekers became an important issue in immigration policy and in the public debate. The purpose of the revision of the Aliens Act was to reduce the number of procedures around admission and removal, and to reduce the duration of the procedures.³⁸ In order to be able to act decisively in this

³⁶ Schrover, M. 2002.

³⁷ For more information see <http://www.parlement.com/9353000/1/j9vvh6nf08temv0/vi55bhxfnrqp>.

³⁸ Kromhout, M.H.C. 2004.

area as central government, the Immigration and Naturalisation Service (IND) was established in 1994. The IND was to focus specifically on an efficient implementation of asylum and migration policies.

Despite the amendments to the Aliens Act, the procedures under immigration law still continued to be large in number and of long duration. In order to regulate asylum policy in a more effective manner and to reduce the number of asylum applications, the Act was revised again and the Aliens Act 2000 entered into force on 1 April 2001.³⁹ The purpose of this new Act was primarily to end the prolonged uncertainty for asylum seekers about 'staying or returning' through the introduction of improved procedures with a more rapid processing time. This new Act provides for only one single asylum residence permit, which may be converted into a permanent residence permit after five years.⁴⁰ The Aliens Act 2000 is still the most important Act in the area of asylum and migration.

All amendments to the Aliens Act occurred after World War II. The description of the developments in the asylum and migration systems in the following subsections consequently relates to the post-war period.

3.2 Post-war waves of migration to the Netherlands

After World War II, the costs of international and even intercontinental migration fell sharply due to far-reaching developments in the area of transport and telecommunication. This caused an increase in the extent of international migration. As the diversity of the regions of origin strongly increased, migration became more diverse in nature. Since World War II, the Netherlands has experienced three large waves of migration, which partially overlapped each other. At the end of the fifties and early sixties, the first wave of migration could be observed. This wave consisted of poorly educated labour migrants from Southern Europe, Turkey, and Morocco. This influx was the result of the strong economic growth in the post-war period and was intended to ease the shortages at the lower end of the labour market. The poorly educated labour migrants consequently came to the Netherlands upon invitation and only for work, in mutual expectation that the migrants would return to their own country. These labour migrants were therefore also referred to as 'guest workers'. With the money earned in the Netherlands, they could subsequently return to their country of origin to build up a new existence there. This wave of migration ended when labour migrants were no longer needed due to the economic recession in 1973. The recession was also the reason for West European countries to introduce a restrictive policy regarding labour migration. In the Netherlands, the first measures to limit migration were implemented in 1975.

The first wave of migration was followed by a wave of family migration, as a significant portion of labour migrants from Turkey and Morocco decided to have their family come over to the Netherlands. Since 1976, family migration has been the most common type of immigration of non-Dutch nationals in the Netherlands.

39 Kromhout, M.H.C. 2004.

40 For more information see <http://www.parlement.com/9353000/1/j9vvh6nf08temv0/vi55bhxfnrqp>.

Although family migration is still the major reason for migration, it has been substantially lower since the period 2003-2005 than before. This may have been caused by the tightened conditions that must be satisfied in order to qualify for family migration. On 1 November 2004, the income requirement of the sponsor (the legal entity or private person who has an interest in the migration of the third-country national, in this case the family member residing in the Netherlands) was raised to 120% of the minimum wage, and the minimum age at which migration for the purpose of family formation was permitted was raised from 18 to 21 years of age. This changed in the course of 2010. Migration for the purpose of family formation as well as migration for the purpose of family reunification is subject to the requirement that the income must at least be equal to the applicable social assistance benefit level. In both cases, the persons concerned must at least be 21 years of age.

The third wave of migration, which has occurred since the eighties up to the present, relates to asylum seekers. An important underlying cause of the large-scale labour migration was the political unrest in Eastern Europe after the fall of communism. The war in former Yugoslavia and the Kosovo crisis resulted in high immigration figures. Conflict situations in countries such as Afghanistan, Iraq, and Somalia have also led to an increase in the number of asylum applications.

In addition to these waves of migration, the Netherlands was also confronted with post-colonial migration. The decolonisation of the Netherlands East Indies in the fifties and the early sixties and the independence of Surinam in 1975 resulted in a number of large incidental migration flows. The migration from the Netherlands Antilles started in the same period, but became substantial, in particular, in the late eighties and in the nineties.

The migration system in the Netherlands is currently dominated primarily by family migrants, labour migrants, student migrants, and asylum migrants.⁴¹

The Table below shows the number of residence permits granted to third-country nationals. The term 'third-country national' means a person who is not a citizen of one of the EU Member States (or the EEA or Switzerland).

Residence permits granted to third-country nationals by purpose of residence

	Total	Education	Employment	Family	Other reasons: total	Other reasons: asylum	Other reasons: residence only	Other reasons: not specified
2005	52.595	7.809	6.255	25.108	13.423	9.958	115	3.350
2006	50.209	7.850	7.691	25.051	9.617	6.389	103	3.125
2007	65.803	8.238	9.156	18.992	29.417	5.717	43	23.657
2008	62.589	8.850	11.613	24.092	18.034	6.088	50	11.896
2009	56.489	9.944	10.433	23.078	13.034	8.490	39	4.505
2010	54.478	10.510	10.448	21.565	11.955	8.679	54	3.222
2011	43.989	10.701	10.961	22.327	11.085	8.382	34	2.669

Source: INDIS/EUROSTAT

Family migration

In the Netherlands, family migration falls into two forms: family reunification and family formation. Family reunification relates, in particular, to women and children who immigrate to join their partner or father who previously entered the Netherlands as a guest worker or a refugee. In the seventies and eighties, the group of migrants consisted primarily of Turkish and Moroccan women who joined their husbands in the Netherlands together with their children. Since the nineties, a decrease in the number of family reunifications has been noticeable. On the other hand, however, an increase has been noticeable in family formation among Turkish and Moroccan population groups. Family formation relates to migrants who get married or who have decided to cohabit without getting married with a partner who resides in the Netherlands.

The number of migrants for the purpose of family reunification decreased in the period from 2005 to 2007. In 2006/2007, the Civic Integration Abroad Act — which entered into force on 15 March 2006 — may have contributed to the strong, but temporary decrease in the number of family migrants. Since said date, migrants who wish to come to the Netherlands for the purpose of family migration must first pass the civic integration examination abroad. This new admission requirement may have resulted temporarily in

fewer applications for family migration. In 2008, the number of applications for this type of migration was at its former level again.

After the number of family migrants had risen again in 2008, a slight decrease was noticeable in 2009 and 2010, possibly as a result of a decrease in the number of highly skilled migrants due to the economic crisis. This resulted in the fact that fewer highly skilled migrants had their family members join them in the Netherlands. In 2011, the number of family migrants slightly increased again.

Still, more than 40% of the non-Western migrants enter the Netherlands as family migrants. This means, therefore, that family migration is the most important reason for non-Western migrants to come to the Netherlands.⁴²

Labour migration

Labour migration is migration for the purpose of performing work in the Netherlands. In the period from 2005 to 2008, the number of labour migrants in the Netherlands increased. This was connected with the favourable economic situation in the Netherlands.

In 2004, the Netherlands introduced the Highly Skilled Migrants Scheme. This Scheme is aimed at making it more attractive for highly skilled migrants to take up residence in the Netherlands through a rapid, clear, and low-threshold procedure. Highly skilled migrants do not require a work permit to perform work, and they are exempt from the civic integration requirement. Practice has shown that the Scheme has attracted specific highly skilled migrants and enterprises. Since the introduction of the Highly Skilled Migrant Scheme, Indian, American, Chinese, Japanese, and Turkish highly skilled migrants have dominated the ranks of those making use of the Scheme. According to Statistics Netherlands (CBS), the number of migrants from Asia will continue to increase, and will for a large portion consist of highly skilled migrants.⁴³ The slight decrease in 2009, which was probably caused by the poor economic circumstances in the Netherlands, did not continue in 2010 and 2011; on the contrary, in 2010 and 2011 even more labour migrants entered the Netherlands than in 2009. One out of ten labour migrants originated from Asia. In the total group of labour migrants, the number of highly skilled migrants has gradually increased. In 2010, 5,500 residence permits were granted to highly skilled migrants, which is an increase of more than 400 permits compared to those granted in 2009. This means that 1 out of 7 labour migrants in 2010 was a highly skilled migrant, whereas in 2005 this was still 1 out of 11.⁴⁴

Student migration

Under specific conditions, foreign students are permitted to stay in the Netherlands to attend a university programme or another course. The student migrants have the option to stay in the Netherlands to attend a study programme at an institution of higher education, to attend a preparatory course prior to attending a study programme in higher education, or — in exceptional cases — to attend secondary educational programmes or

42 For more information, see <http://www.cbs.nl/nl-NL/menu/themas/bevolking/publicaties/artikelen/archief/2012/2012-migratiekaart-art.htm?RefererType=RSSItem>.

43 CBS/WODC 2011.

44 For more information, see www.cbs.nl.

vocational educational programmes. This promotes the competitive position of Dutch higher education at an international level, whereas the admission of student migrants to secondary educational programmes or vocational educational programmes may contribute positively to the development of the country of origin.

The most significant recent development in the area of student migration is the introduction of the system of covenants. This system implies that, since 1 August 2008, applications for a residence permit for foreign students can only be submitted by the educational institutions that have entered into a covenant with the IND. Since said date, it has no longer been possible for students to submit an application for a residence permit without the intermediary of an educational institution.

The number of non-Western students in the Netherlands has shown a rising trend since 2005. In 2005, more than 8,000 students from non-Western countries entered the Netherlands, this number increased to nearly 11,000 students in 2011. In this period, the origin of the non-Western students was rather one-sided. Each year, the largest group of students, circa one third, originates from China. The fact that the Chinese nationality is represented well among the foreign students in the Netherlands is due to the fact that the Chinese government encourages students to acquire knowledge abroad and to subsequently bring this knowledge back to China. In order to interest students who are willing to go abroad for the Netherlands, the Ministry of Education, Culture and Science actively promotes the Netherlands as country of destination among Chinese students. In addition, each year an average number of 1,070 Indonesians study in the Netherlands. As a result of this, Indonesia is the second non-Western country of origin in the top 5 of incoming students in the Netherlands who are obliged to hold an MVV. This is probably related, to a large extent, to the historical ties between the two countries. Data of the OECD show that there are indeed, relatively speaking, a great deal more Indonesian students in the Netherlands than there are in the neighbouring countries of Belgium and Germany. Other countries from which many of the students who come to the Netherlands originate are Turkey and India.⁴⁵

Asylum migration

Asylum migration pertains to persons who submit an asylum application to the authorities of a country of which they do not have the nationality. Causes of asylum migration may be found, among other things, in armed conflicts and structural violation of human rights, such as wars between independent states and ethnic conflicts within states. Since 2000, the number of asylum applications has strongly decreased. With the introduction of the Aliens Act 2000, the applications of a large portion of the asylum seekers were handled relatively more quickly than was the case before 2001. This may have had a discouraging effect on potential asylum seekers whose applications were likely to fail. The decrease may furthermore be explained by the hardening of the tone in the political and public debate on migrants since 2002. In 2005 and 2006, the number of asylum seekers rose slightly again, primarily because of an increasing influx of asylum seekers from

Somalia and from Iraq, where the situation continued to be turbulent after the United States had transferred its power to the temporary Iraqi government. After a dip in 2007, the influx increased again in 2008 and 2009. By far the largest groups of asylum seekers in this period originated from Somalia and Iraq. In addition, since 2007 the number of asylum applications from Afghans increased once again, after a strong decrease in 2001 and 2002. In the period from 2000 up to and including 2011, these three countries formed the most important countries of origin of asylum seekers.⁴⁶ Since 2011, the Minister for Immigration, Integration and Asylum has aimed at providing clarity to asylum seekers quickly, with measures being taken against fraud, and — in the case of a refusal — maximum efforts being made to realise the asylum seeker's return to the country of origin. The number of initial asylum applications decreased in 2011 from 13,290 applications in 2010 to 11,565 applications in 2011.⁴⁷ This was caused largely by the decrease in the number of initial applications from Somalis. This decrease is the result of the measures against fraud and misuse among this group. The number of Afghan initial asylum applications has increased. This is due to the fact that the security situation in Afghanistan worsened in 2011. For this reason, a specific policy applies to specific groups of Afghans.

46 CBS/WODC, 2011.

47 Data from Eurostat.

4 THE ORGANISATION OF ASYLUM AND MIGRATION POLICIES

This Section provides a description of the way in which asylum and migration policies are organised in the Netherlands. This Section deals successively with the procedures for entry, admission, lawful residence, access to the labour market, and the return of third-country nationals. Except in the case of return, the discussion of the procedures is broken down by asylum policy on the one hand and migration policy on the other hand. In this context, the emphasis is on the policy that applies to third-country nationals. Policy issues regarding EU nationals and residence under European Law have not, for the most part, been taken into consideration.

4.1 Asylum and Migration

The purpose of this report is to set out the Dutch context regarding these issues. The international organisations involved in the issue of entry and admission have not been included here. The relevant organisations in the area of entry, lawful residence, access to the labour market, and return have been discussed in Section 2.

4.1.1 *Entry*

Under immigration law, the term 'entry' means: 'the actual entry into the Netherlands by passing the border or by passing the personal security checks at airports and seaports'. In this context, the term 'entry' only refers to a factual geographical circumstance, and does not imply lawful residence. With respect to lawful entry into the Netherlands, the third-country national is required to have a valid border-crossing document. The third-country national may furthermore not pose a danger to public order or national security, and he must have sufficient means of existence for the duration of the intended stay. In principle, the border-crossing document is a valid passport, together with a visa, if required. The most important function of the passport is that it states the holder's identity and the country of issue. Knowing the identity of the third-country national is important for the verification of whether any objections exist against his entry.

In order to be permitted to enter the Netherlands, a third-country national coming from outside the Schengen area is obliged to pass a border crossing point. In the Netherlands, only the seaports and the airports function as border crossing points. At the border crossing points, border controls are performed to check whether the person concerned, their means of transportation, and the objects they possess/carry with them may be admitted to the Netherlands.⁴⁸ The border controls are performed by the Royal Netherlands Marechaussee, and — in the Rotterdam port area — by the Seaport Police. In 2011, the Royal Netherlands Marechaussee employed more than 700 border guards, and the Seaport Police employed more than 100 border guards.

48 Kuijer, A. (ed.), 2005.

Since 1992 — pursuant to the Schengen Agreement — the Netherlands has not performed any border controls on the internal borders with Belgium and Germany, nor on vessels and aircraft originating from other parties to this Schengen Treaty. The Royal Netherlands Marechaussee is, however, still charged with Mobile Security Monitoring. Among third-country nationals who enter the Netherlands from another Schengen country, travel document checks are carried out in the area directly behind the border, and random checks are carried out throughout the Netherlands, on the roads, in the trains, on water, and with respect to air traffic.⁴⁹ Third-country nationals who have been refused entry into the Netherlands must leave the country immediately and, in doing so, they must follow the instructions of the Royal Netherlands Marechaussee. In 2011, the Royal Netherlands Marechaussee and the Seaport Police refused 4,240 people entry into the Netherlands.⁵⁰

Third-country nationals whose applications for a residence permit have been refused and third-country nationals whose residence permits expire and are not extended, or whose residence permits have been withdrawn are — officially — not permitted or no longer permitted to enter the Netherlands, and are considered to be illegally present in the Netherlands. Persons who have never applied for a residence permit are also deemed to be staying illegally in the Netherlands. The Aliens Police and the Royal Netherlands Marechaussee are authorised to carry out checks on third-country nationals in connection with suspected unlawful residence in the Netherlands.⁵¹ They may ask third-country nationals to prove their identity, and they may take them to the police station for questioning if they suspect them of staying illegally in the Netherlands. They also have the power to stop and search vehicles, to take possession of a travel document or an identity document, and — upon suspicion of unlawful residence — to enter a dwelling without the owner's consent.⁵²

4.1.1.1 *Asylum*

Asylum seekers may be refused entry at Dutch external borders (seaports or airports). In that case, they must subsequently submit their asylum application at the Schiphol Airport application centre. As a result of this, their first contact will be with the Royal Netherlands Marechaussee or the Seaport Police.

Third-country nationals who have been refused entry usually receive a custodial order. During the General Asylum Procedure, the third-country national is obliged to stay in the Schiphol Airport application centre. The IND will ultimately decide whether the asylum seeker will be granted entry into the Netherlands. This decision is based on the assessment of the documents submitted, the plausibility of the asylum account, and the situation in the country of origin. In this decision-making process, the IND can use, among other things, the information of the Identity and Document Investigation Unit, the Office for Country Information and Language Analysis, and the country reports and person-specific reports from the Ministry of Foreign Affairs.

49 For more information, see also www.defensie.nl.

50 Source: Aliens Basic System (VBS) (data: Royal Marechaussee) and Seaport Police Verification Information System (ZVIS) (data: Seaport Police)

51 The Aliens Police and the Royal Netherlands Marechaussee have the same powers, but the division of tasks distinguishes between interior supervision of foreign nationals, and Mobile Security Monitoring in the border region with Germany and Belgium.

52 Aliens Act 2000, Section 53(1).

When the asylum application is refused during the asylum application at the Schiphol Airport application centre, the refusal of entry will, in principle, continue to apply and the custodial order will be extended until the third-country national's departure (see Section 4.1.7). Up until that time, they will be accommodated in special detention centres for third-country nationals awaiting removal.

Asylum seekers who did not register as an asylum seeker at a Dutch external border, and who have passed the Dutch border, have obtained entry into the Netherlands on their own account. In the event that they are stopped by the Aliens Police, the police can therefore no longer refuse entry. The fact that they are staying illegally in the Netherlands remains, however, until they have indicated that they wish to submit an asylum application. Section 55 of the Aliens Act provides that these third-country nationals will have to be available in connection with the admissibility of the application for a residence permit. The asylum seeker must first register at the application centre of the Aliens Police in Ter Apel (the first-day registration). The asylum application is subsequently submitted in the application centre in Ter Apel, Den Bosch or Zevenaar. Unaccompanied minors form an exception to this procedure; they are obliged to register with the Aliens Police in the Schiphol Airport application centre. The asylum application is subsequently submitted in the Den Bosch application centre. The unaccompanied minor usually does not receive a custodial order if he has already gained entry into the Netherlands.

For the purpose of the assessment of the asylum application, it is important that the identity of the third-country national is already established before the start of the General Asylum Procedure. This duty of establishing identity is assigned to the Aliens Police and the Royal Netherlands Marechaussee. In July 2012, the Aliens Police employed circa 500 people.⁵³

4.1.1.2 *Migration*

Third-country nationals who require a visa and who wish to come to the Netherlands for a maximum stay of three months per six-month period must hold a passport. The visa must have been arranged prior to the migration to the Netherlands. The visa is intended to subject the third-country national prior to his entry into the Netherlands to an investigation to check whether the stay of the applicant of the visa in the Netherlands is desirable. With the entry into force of the Convention Implementing the Schengen Agreement on 26 March 1995, a uniform visa has been established that is valid throughout the Schengen area. The visa with limited territorial validity forms an exception to this. The visa has the shape of a sticker, which is affixed to the passport.⁵⁴ The following visas can be distinguished in the Schengen area:

⁵³ This information was requested from the Aliens Police in July 2012.

⁵⁴ The Visa Code entered into force on 5 April 2010. This resulted in the cancellation of two types of visa, namely Type B, the 'Transit Visa' (this visa authorised third-country nationals to transit through the territories of the Schengen countries. The visa is valid for various transits, provided that the duration of each transit does not exceed a period of five days), and Type B or Type C visa, the 'Group Visa' (this is a transit visa or a travel visa with a maximum validity of thirty days). This visa is issued to third-country nationals who hold a group border-crossing document, and who travel in a group of at least five persons and not more than fifty persons, and who have a joint destination).

Types of Schengen visas	Description
Type A: Airport transit visa	Third-country nationals holding this visa are authorised to stay in the international transit zone of an airport during stopovers without being granted entry into the national territory of the relevant Schengen country.
Type B: Short-stay visa or travel visa	Third-country nationals holding this visa are authorised entry into the Schengen area for purposes other than those related to immigration. Counting from the date of first entry, neither the duration of an uninterrupted stay nor the duration of the consecutive stays may exceed three months per six-month period.
Type C: Circulation visa	This is a short-stay visa which authorises entry to various countries. The validity of this visa is more than 90 days, with a maximum of five years.
Visa with limited territorial validity	This is a short-stay transit visa or a travel visa, which authorises the holder to enter the territory of one Schengen country or the territories of several Schengen countries. This visa is issued if the applicant does not qualify for a travel visa, whereas reasons exist to authorise entry to a specific territories of the Schengen area. Such a visa may be granted on humanitarian grounds, national interest and/or international obligations.

In addition to the above-mentioned Schengen visa, a number of visas can be distinguished that apply only to the Netherlands. These national visas are:

National visas	
Return visa	A third-country national who is permitted to await a decision/final decision on his application for a residence permit in the Netherlands requires this visa for re-entry into the Netherlands, in the event that he has left the Netherlands for urgent reasons. The return visa is issued with a validity of not more than three months.
Regular Provisional Residence Permit (MVV)	Long-stay visas (Type D) are national visas for a stay of more than 90 days, which are issued by a Schengen Member State in accordance with its own legislation. In the Netherlands, this is a Regular Provisional Residence Permit (MVV). The MVV grants the holder of this visa entry into the Netherlands, which enables him or her to apply for a residence permit for the intended stay of longer than three months.

A third-country national will have to apply for a visa at the diplomatic representation of the Schengen Member State where the principal designation is located prior to travelling to the Netherlands. In practice, however, the third-country national may be required to apply for a visa at a representation of another Schengen country which issues visas on behalf of the Netherlands. In the Netherlands, the Minister of Foreign Affairs is respon-

sible for the assessment of and the decision on applications for visas. The diplomatic missions may either decide on the applications themselves or submit the application to the IND or the Ministry of Foreign Affairs (see also Section 2). In some cases, the visa applications are submitted to the central authorities of other Schengen countries. Visa applications are checked in both the Schengen Information System (SIS) and the Dutch Investigation System (OPS). If the third-country national is, for instance, listed as a danger to public order, the visa application may be refused.

Third-country nationals who wish to travel to the Netherlands for a stay of longer than three months are subject to the requirement of holding a **Regular Provisional Residence Permit (MVV)**. *Nationals of EU-EEA countries, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, United States of America, or Vatican City do not require an MVV.*

The third-country national must apply for the MVV in person at a diplomatic mission in the country of origin or the country of continuous residence. The country of continuous residence is a country where the third-country national is permitted to stay on the basis of a right of residence/residence document (e.g. a residence permit). Once the third-country national initiates this official **MVV procedure**, the diplomatic mission will state which documents are required. The diplomatic mission will subsequently send the application to the IND, which assesses, on behalf of the Ministry of Foreign Affairs, whether the third-country national satisfies the conditions for the purpose of residence for which he intends to migrate to the Netherlands and whether he has the right documents. The IND performs this assessment on the basis of the information and documents provided by the third-country national and, if applicable, by the sponsor. The sponsor is the person or organisation that has an interest in the migration of a third-country national, such as a Dutch employer or a family member who resides in the Netherlands. The third-country national will be notified of a positive decision on the MVV application through the diplomatic mission. He will be able to collect the MVV in person at the diplomatic post within a specific period of time.

Before a third-country national personally applies for a Regular Provisional Residence Permit (MVV), a sponsor residing in the Netherlands may submit a request to the IND for advice in connection with the third-country national's intention to apply for an MVV abroad. This is the so-called 'MVV advisory procedure'. If all conditions for the purpose of residence for which the third-country national intends to migrate to the Netherlands have been satisfied, the IND will authorise the diplomatic mission in the country of origin or continuous residence to issue an MVV with reservation. This reservation includes, among other things, the fact that further investigation is to be conducted into the authenticity of the documents submitted, and that no circumstances exists that preclude the issue of an MVV. The sponsor will be informed of the positive advice, and he will also be informed of the fact that the third-country national will personally have to contact the diplomatic mission to officially apply for the MVV.⁵⁵ Certain companies or instituti-

55 For more information, see <http://english.ind.nl/residencewizard/>.

ons that have entered into a covenant with the IND use a fast-track MVV procedure. In this case, the applications to grant an MVV are submitted directly to the IND. This so-called 'accelerated MVV procedure' is used, in particular, by multinationals and educational institutions, such as universities.

Third-country nationals between 18 to 65 years of age who want to stay in the Netherlands and are obliged to apply for an MVV are required - depending on their purpose of residence - to first take a civic integration examination abroad at a diplomatic mission in the country of origin or the country of continuous residence. The underlying reason of this examination is to prepare the third-country national as well as possible for participation in Dutch society. This requirement applies, in particular, to persons who wish to enter the Netherlands for family reunification or family formation. Several purposes of residence are not subject to the above-mentioned requirement. Third-country nationals who wish to enter the Netherlands in order to - for example - work as an employee are exempted from the examination (except if the third-country national intends to work as a spiritual leader or a teacher of religious knowledge; they are required to take the examination).⁵⁶ The third-country national takes the examination before his migration to the Netherlands. The civic integration examination abroad tests the third country national's knowledge of the Dutch language and society. This examination is taken by means of a telephone connection with a speech recognition computer. The results of the examination are announced immediately. After passing the examination, the third-country national may be granted an MVV for the Netherlands. If the relevant country does not have a Dutch diplomatic mission, the third-country national will be permitted to take the examination in a neighbouring country.⁵⁷

4.1.2 Admission Conditions

In the Netherlands, residence permits are granted when this is required by international obligations, if the presence of the third-country national serves essential interests of the Netherlands, or if compelling humanitarian grounds exist. The assessment of a residence permit is the responsibility of the IND. The IND furthermore assesses the third-country national's admission on three aspects: the interests of public order and national security, whether the third-country national satisfies the Aliens Regulations, and to what extent it is expected that the third-country national will have to rely on public funds. The last aspect relates to benefit payments under national insurance schemes, such as the social assistance payment and the unemployment benefit payment.

In 2012, the IND employed 3,200 employees.⁵⁸

4.1.2.1 Asylum

On 1 July 2010, the so-called Improved Asylum Procedure entered into force in the Netherlands. In the situation prior to this new asylum procedure, the asylum procedure for applications that were not decided within 48 hours lasted longer than considered desirable by the government. The former 48-hour procedure (which aimed at deciding

⁵⁶ For more information, see www.rijksoverheid.nl.

⁵⁷ Aliens Act Implementation Guidelines 2000 (B), Chapter 2.

⁵⁸ Information source: IND.

on an asylum application within 48 hours) was extended by the implementation of this new procedure into a General Asylum Procedure of eight days. With this legislative amendment, the former government sought to ensure that more asylum seekers in the application centres would obtain clarity sooner about their asylum application, and that the asylum procedure would be carried out in a more meticulous and careful manner. This means that more applications are supposed to be handled in the General Asylum Procedure than was previously the case in the 48-hour procedure. In principle, it should be possible to handle the applications that are still referred to the Extended Asylum Procedure more rapidly, as the detailed interview and the corrections and supplements will always be dealt with in the General Asylum Procedure.

In the Improved Asylum Procedure, other aspects relating to the asylum seeker are also included, to the extent possible, in the asylum procedure itself or in a parallel procedure. These aspects include, for instance, medical circumstances and being a victim of human trafficking. In the former asylum procedure, these aspects were still dealt with in separate procedures after completion of the asylum procedure. Where there is reason to do so, the assessment of these aspects is – to the extent possible – now included in the same decision-making process, in order to prevent subsequent procedures.⁵⁹

The new procedure also enables the court to take account of relevant new circumstances and policy changes in a possible appeal phase.

This subsection provides a further explanation of the workings of the General Asylum Procedure and the Extended Asylum Procedure.

General Asylum Procedure

The asylum procedure of eight days is referred to as the General Asylum Procedure. Both the initial interview and the detailed interview are conducted in the General Asylum Procedure. Any corrections and supplements will also be submitted in this period. With the extension of the 48-hour procedure to eight days, there is more room to provide legal assistance to the asylum seekers. Finally, at the end of the General Asylum Procedure, a decision will be made as to whether or not the application for asylum will be granted. If it is not possible to decide on the asylum application within these eight days – for instance, because further investigation is required – the asylum seeker is referred to the Extended Asylum Procedure.⁶⁰

After the first-day registration, the asylum seeker is entered in a register by the Aliens Police or the Royal Netherlands Marechaussee.⁶¹ They enter, among other things, the personal data, they take fingerprints, and they have the power to search the third-country national's body and clothes. In the current procedure, the asylum seekers who register at the Ter Apel application centre are offered a rest and preparation period of

⁵⁹ INDIAC – NL EMN NCP, 2009.

⁶⁰ Pursuant to Article 3.115(1) of the Aliens Decree Procedure may be extended by a maximum period of six days. The possibilities of extending the General Asylum Procedure are limited to a few situations described specifically, and these possibilities will be exercised with restraint.

⁶¹ The Royal Netherlands Marechaussee focuses primarily on the transfer to Schiphol Airport application centre of asylum seekers who have come forward at the exterior border, and on document investigation at all application centres.

at least six days prior to the official submission of the asylum application. During the rest and preparation period, the asylum seeker has some time to settle down. The Dutch Council for Refugees informs the asylum seeker about the procedure.⁶² A legal assistance counsellor explains the contents of the procedure. In addition, this period may be used to initiate a medical examination in order to establish whether the asylum seeker has any medical problems, and to initiate an investigation into the asylum seeker's identity and into the documents needed to substantiate the asylum account (such as arrest warrants and legal judgments). In this phase, it is possible to verify – on the basis of the asylum seeker's fingerprints – whether he has previously submitted an asylum application to another country. If this is the case, a so-called Dublin Claim is submitted to the relevant country.

At the end of the rest and preparation period, the asylum seeker submits his asylum application at an application centre of the IND by appointment. In the Netherlands, the application centres are located in Ter Apel, Zevenaar, and Den Bosch. Amsterdam Airport Schiphol has a special application centre for asylum seekers who came forward as an asylum seeker at the Dutch external border. Although the third-country national — after he is transferred to the Schiphol Airport application centre — is given the opportunity to submit the asylum application as soon as possible, and the rest and preparation period does not apply to him for the time being, prior to the submission of the asylum application as many activities as possible are performed, which are usually performed during the rest and preparation period. This means that the third-country national will receive information from an employee of the Dutch Council for Refugees about the procedure to submit an application, that he will be prepared for the procedure by a legal assistance counsellor, and that medical advice will be obtained about him, provided that the third-country national consents to this. These activities will take place, however, in a very short period of time: less than six days.

As soon as possible after the submission of the application, an initial interview will be conducted in the application centre. The initial interview is an interview with an IND employee and is intended to establish the asylum seeker's identity, nationality, and travel route. The interview will be conducted in a language understood by the asylum seeker, with the aid of an independent interpreter. The interview is laid down in a report.

In principle, the detailed interview will be conducted in the General Asylum Procedure, as well. Exceptions are possible if medical reasons prevent the third-country national from being interviewed, or if the asylum seeker is an unaccompanied minor under 12 years of age. At the Schiphol Airport application centre, relevant individual aspects may also give reason for the decision not to conduct a detailed interview in the General Asylum Procedure. In this context, allowance is made for the circumstance that the asylum seeker has not had a rest and preparation period.

62 In July 2012, the Dutch Council for Refugees employed a total of 600 employees and it had 7,000 volunteers working for its organisation. A number of these employees are engaged in the General Asylum Procedure and work at the application centres. A large number of the employees of the Dutch Council for Refugees work at several other reception centres or for municipal working groups of the Dutch Council for Refugees.

The detailed interview is a conversation with an IND employee about the reasons for submitting the asylum application. A legal assistance counsellor prepares the asylum seeker for the interview and is permitted to be present during the interview. The interview is conducted in a language that is understood by the asylum seeker; for this reason there is also an independent interpreter present during this interview. The IND employee who conducts the detailed interview compiles a report of the interview; this report is issued to the asylum seeker as soon as possible. The asylum seeker is given the opportunity to discuss the report with the legal assistance counsellor, and, if necessary, to submit corrections and supplements.

The situation may arise that — after the detailed interview has been conducted or as a result of the corrections and supplements submitted — it becomes apparent that the IND will need more time for further investigation. In that case, the asylum application will be handled further in the Extended Asylum Procedure. It is not possible to decide on the asylum application within the General Asylum Procedure if the third-country national belongs to a category of third-country nationals in respect of whom a suspension of the decision applies. This category of third-country nationals, as well, is referred to the Extended Asylum Procedure.

When it becomes apparent after the detailed interview that the asylum seeker satisfies the conditions for an asylum residence permit, the asylum permit will be granted in the General Asylum Procedure. If the asylum seeker does not satisfy the conditions, he will receive a notice stating IND's intended decision to refuse the asylum application. This notice will state the reasons for the refusal. The asylum seeker — together with his legal assistance counsellor — will subsequently be given the time to respond to this intention. This response will be assessed by the IND, and the IND will subsequently make a decision on the asylum application. The IND may decide that the asylum application is to be granted after all, and that the asylum seeker will still receive a residence permit. If the IND decides that more time is required for investigation, the asylum application will be handled further in the Extended Asylum Procedure.

The last possibility, with respect to a decision on the response to the intention is that the asylum application is refused. In that case, the asylum seeker will receive a notice of the decision refusing the asylum application; this notice will also state that the asylum seeker must leave the Netherlands. This decision is issued by the IND. The asylum seeker, however, has the right to submit an appeal to the court against the refusal of the asylum application. If the asylum seeker lodges an appeal, he is not permitted to await this appeal in the Netherlands. If the third-country national still desires to await the appeal in the Netherlands, he may request the court for a so-called provisional ruling. In principle, the decision on an initial request for a provisional ruling may be awaited in the Netherlands. Following the refusal of the initial asylum application, the asylum seeker usually retains the right to reception facilities during the departure period of 28 days. If the court declares the asylum seeker's appeal well-founded, the IND will have to assess

the application again. Both the third-country national and the Minister for Immigration, Integration and Asylum have the right to appeal against the court decision to the Council of State. The asylum seeker is not permitted to await the decision on the appeal to the Council of State, unless a request for a provisional ruling is granted.

Extended Asylum Procedure

If it becomes apparent, from a preliminary investigation of the asylum application in the application centre, that more time is required for further investigation, the follow-up investigation is conducted in the Extended Asylum Procedure. The asylum seeker may await the assessment of the asylum application in the Netherlands. In this period, he stays in a reception centre of the Central Agency for the Reception of Asylum Seekers (COA).⁶³ For asylum seekers who have been refused entry to the Netherlands and who have received a custodial order, this usually means that the detention is ended and that they are transferred to a reception centre. In specific situations — for instance when it is expected that the asylum application will be refused after a short investigation, or if the third-country national poses a danger to public order and national security — the custodial order is upheld. This is a so-called ‘closed extended asylum procedure’.

There are three moments in the General Asylum Procedure at which the asylum seeker may be referred to the Extended Asylum Procedure: after the initial interview, after the detailed interview, and after the response to the intended decision. In the Extended Asylum Procedure, a detailed interview is, in principle, conducted only if this has not yet been conducted in the General Asylum Procedure. After the asylum seeker has been issued or has received the report of the detailed interview, he subsequently has two weeks to submit corrections and supplements. In the Extended Asylum Procedure, the period to submit a written response to the intended decision is four weeks.

In principle, the IND makes a decision in this procedure in six months — instead of in eight days — after the submission of the asylum application. It sometimes occurs that, temporarily, no decision is made on asylum applications from people from specific countries. This is referred to as a ‘suspension of the decision’. This suspension may be announced if the general security situation in the country of origin gives reason to do so (e.g. if fundamental changes are occurring in a short period of time) or if a substantial number of the asylum applications submitted originate from a specific country or from a specific region. As a result of such a suspension of the decision, the standard decision period may be extended from six months to a maximum period of one year. In situations where a time-consuming investigation must be conducted by third parties (e.g. for the purpose of compiling a person-specific report by the Ministry of Foreign Affairs), the decision period may also be extended by six months.

If the asylum seeker lodges an appeal, he is, in principle, permitted to await this appeal in the Netherlands. During this period, the asylum seeker will stay in one of the reception centres of the COA. Once the asylum application is definitively refused, the asylum

seeker must leave the Netherlands within four weeks. At the end of this period, the COA will terminate the reception facilities and accommodation.

Unaccompanied minors

With regard to unaccompanied minors, a special procedure can be distinguished in the submission of an application for an asylum residence permit. An unaccompanied minor is under 18 years of age, single, and has arrived in the Netherlands unaccompanied by an adult relative by blood or a relative by marriage. The major part of the procedure is the same as that for other asylum seekers. The difference is, however, that unaccompanied minors register at the Schiphol Airport application centre instead of Ter Apel. During the initial interview, special attention is paid to retrieve data about accommodation in the country of origin and the independence of the unaccompanied minor concerned. It is possible to subject third-country nationals under 12 years of age to a detailed interview, but only in the Extended Asylum Procedure. These detailed interviews are conducted by specialised IND employees in special, child-friendly interview rooms. On the instructions of the Dutch government, the unaccompanied minors receive assistance during the asylum procedure from the guardianship agency Stichting NIDOS.⁶⁴ In July 2012, NIDOS employed 200 employees.⁶⁵

4.1.2.2 Migration

Admission to the Netherlands on grounds other than asylum is also assessed by the IND. In that case, the third-country national may apply for a temporary regular residence permit. The application for this type of residence permit must state the reason for the stay in the Netherlands, the so-called purpose of residence. Each purpose of residence is subject to different conditions, and other documents are requested to substantiate the application. The application for each type of residence permit is, in principle, submitted to an IND Desk. In addition, a valid travel document is required for each purpose of residence. The procedure may be time-consuming, as the IND must verify some of the documents submitted in the country of origin. In principle, the IND has 6 months to make a decision. Subsequently, two decisions on the application are possible. Firstly, the application may be granted, and the third-country national receives a residence permit. In that case, the third-country national will receive a letter stating what to do and where to collect the residence permit. The application may also be refused. In that case, the third-country national will receive a letter (the decision) explaining why the application has been refused. The third-country national has the right to submit an application for review to the IND or to appeal to the court. The third-country national must submit this application or initiate an appeal within four weeks from the date of the notice of the decision.

The regular purposes of residence that occur most frequently are work in paid employment, family reunification/family formation, and study. Below a brief description is given for each of these purposes of residence. In order to be able to obtain a residence permit, third-country nationals who are obliged to hold a Regular Provisional Residence

⁶⁴ Kuijter, A. (ed.), 2005.

⁶⁵ Information source: NIDOS.

Permit (MVV) are required to have such an MVV (the MVV procedure is described in Subsection 4.1.1.2). If, in the descriptions below, reference is made to a valid MVV being required, this requirement applies only to third-country nationals who are obliged to hold an MVV. When an MVV is granted, the verification of whether the third-country national fully satisfies the applicable conditions has already been performed in the country of origin, as a part of the admission procedure. For third-country nationals who are obliged to hold an MVV, the verification of the application for a temporary regular residence permit is, consequently, marginal.

Work in paid employment

The temporary regular residence permit which is required in order to be able to perform work in paid employment is granted to the third-country national who is already working in paid employment or who will work in paid employment, and in respect of whom the UWV WERKbedrijf (the work placement branch of the Employee Insurance Agency) has issued a work permit to the employer.⁶⁶ Such a residence permit is furthermore issued only if the third-country national holds, among other things, a valid MVV, and a valid border-crossing document. Another requirement is that the third-country national will, with the work in paid employment, be earning an independent income/ an income that provides an independent means of existence.

Admission of family member or relatives

Family members or relatives are admitted to the Netherlands only if the person residing in the Netherlands holds Dutch nationality or has a residence permit. The relationship pertaining to family law must be demonstrated on the basis of legalised official documents. In addition, the third-country national requesting admission must hold a valid MVV and a valid border-crossing document. Another condition is that the person with whom residence is requested has sufficient and independent means of existence.⁶⁷ Adult family members who are obliged to hold an MVV, and who seek admission to the Netherlands for the purpose of family reunification, must pass a civic integration examination in order to be granted an MVV.

Study

A third-country national who is admitted for study purposes is granted a residence permit on the restriction of 'study at ...'. In order to qualify for such a residence permit, the third-country national — in addition to satisfying the general conditions for the granting of a residence permit (such as passport and MVV requirements, means of existence, and proof that he is no threat to the public order) — must be enrolled or must prove that he will be enrolled in the educational institution where he is going to attend the study programme. It must always concern a full-time study programme at a Dutch research university or universities of applied sciences, or at an institution of secondary education or an institution of vocational education.⁶⁸ The residence permit may furthermore be

66 In July 2012, 30 employees of UWV WERKbedrijf handled the applications for a work permit. Information source: UWV WERKbedrijf.

67 Kuijjer, A. (ed.), 2005.

68 If it concerns a programme at an institution of secondary education or an institution of vocational education, one of the requirements is that it is an acknowledged full-time day course, for which the Netherlands is the most suitable country, and which enables the international student to contribute positively to the development of his country of origin.

issued only for the study programme at an educational institution that has entered into a covenant with the IND. In addition, the third-country national must sign a declaration that he is aware of the fact that residence is granted solely for study purposes, and that he will have to leave the Netherlands upon completion or interim termination of the study programme.⁶⁹ A residence permit for study purposes may be acquired by following the Accelerated Procedure. This means that, in principle, the student will know whether he will be granted the required MVV within two weeks from receipt of the application by the IND. The application for a residence permit is not submitted by the third-country national himself, but by the educational institution where he intends to follow his study programme.

4.1.3 *Legal residence*

Legal residence is a situation in which the third-country national holds a valid residence permit, or is following the procedure for a valid residence under aliens law, or in which he is present in the Netherlands during the so-called permit-exempt term, during which term the third-country national satisfies the obligations to stay in the Netherlands for a period of shorter than three months. In addition, there are several exceptional situations in which a situation of lawful residence can also be deemed to exist.⁷⁰ This subsection provides a discussion of the different residence permits.

The Netherlands distinguishes between the following residence permits:

1. Temporary asylum residence permit;
2. Permanent asylum residence permit;
3. Temporary regular residence permit;
4. Permanent regular residence permit;
5. Residence card for Community nationals.

In addition to the above-mentioned permits, the Netherlands also has the so-called 'W-document'. This document is issued by the IND to asylum seekers who have not yet received a residence permit, but who are awaiting the outcome of their asylum procedure. The so-called 'W2-documents' are intended for other third-country nationals who do not have a residence permit, but who must nevertheless be able to provide proof of identity, and who cannot be blamed for the absence of a passport.⁷¹ The Netherlands has a statutory duty to provide proof of identity, which implies that every person of 14 years of age and older must be able to present a valid identification document if so requested by the police or a supervisory official.

W2-documents are furthermore issued to asylum seekers who are awaiting the submission of their asylum application during the rest and preparation period.

In order to collect the residence permit granted to him, the third-country national must go to an IND Desk. In the Netherlands, the IND Desks are located in Zwolle, Utrecht, Rijswijk, The Hague, Rotterdam, Eindhoven, Den Bosch, Amsterdam, and Hoofddorp.

⁶⁹ Kuijer, A. (ed.), 2005.

⁷⁰ Aliens Act 2000, Section 8.

⁷¹ For more information, see <http://english.ind.nl/residencewizard/>.

4.1.3.1 *Asylum*

In the Netherlands, an asylum residence permit is meant for third-country nationals who seek protection in this country. The Aliens Act 2000 provides for one type of residence permit for all asylum seekers whose asylum application is granted. Holders of this residence permit are permitted to do paid work, and they are entitled to facilities, including housing in any municipality, schooling, social security benefits, and student grants and loans. Under specific conditions, they are also entitled to family reunification.

If the asylum application is granted, the asylum seeker is first given a temporary permit. The IND issues such a **temporary asylum residence permit** for a period of five years.⁷² At the end of this five-year period — if return to the country of origin is not possible — asylum seekers may submit an application to the IND for a **permanent asylum residence permit**. The application cannot be submitted until four weeks prior to the expiry of the temporary asylum residence permit. One requirement laid down for the application for this type of residence permit is that the asylum seeker must have passed the civic integration examination. This civic integration examination is different from the civil integration examination abroad, which must be taken abroad in order to be admitted to the Netherlands. The level of the civic integration examination that must be passed in order to qualify for a permanent asylum residence permit is higher, and more examination sections are tested (see also Subsection 4.1.4).

4.1.3.2 *Migration*

Dependent on the purposes of residence, the periods for which the IND issues temporary regular residence permits for stays on regular (i.e. non-asylum-related) grounds are one year, three years or five years. The purpose of residence is also stated on the residence permit. An application for an extension of the residence permit must have been submitted to the IND before the period of validity of the permit expires. The IND assesses the application and determines if and for how long the period of validity of the residence permit will be extended. The maximum period of extension is five years.

If the third-country national has lived in the Netherlands on the basis of a temporary regular residence permit for a non-temporary purpose of residence for an uninterrupted period of five years, he may submit an application to the IND for a **permanent regular residence permit**. One requirement laid down for the application for this type of residence permit is that the third-country national must have passed the civic integration examination.

The **residence card for Community nationals** is issued by the Immigration and Naturalisation Service (IND) to persons holding the nationality of an EU or EEA Member State or Switzerland (except Bulgaria and Romania) who intend to stay in the Netherlands for a period of more than three months. These persons do not require a residence permit in the Netherlands, as it has been decided at the European level that persons holding the

nationality of an EU Member State must be able to exercise their right to move and reside freely in another Member State. They are, however, obliged to register with the IND. The IND will then register their purpose of residence.⁷³

4.1.4 *Integration*

In the Netherlands, the Minister for Immigration, Integration and Asylum is responsible for a coherent and nation-wide integration policy. The Directorate for Integration and Society decides on the concrete details of policy development in the area of integration. Dutch integration policy is aimed at achieving a socially stable and resilient society. Starting point for Dutch integration policy is that every person in the Netherlands (native-Dutch people as well as newcomers) has an interest in each other and in the Netherlands. The government wants people who come to live in the Netherlands to participate in Dutch society, irrespective of where they originate from or what they believe.

People who come to live in the Netherlands must build up an independent existence and show an interest in society. Society is changed by migrants, but it is the intention of the new policy that society continues to be identifiable as Dutch. It should be a society in which both native-Dutch people and migrants feel at home. In addition to the focus on participation of people through general policy, for instance on the labour market or in education, specific policies are pursued to combat matters that may hinder active participation in society, such as measures against discrimination.

In order to give everyone the chance to build up an independent existence in the Netherlands, the Dutch government has decided to accelerate the participation of migrants (settled immigrants and newcomers) by offering civic integration courses.

The obligation to participate in a civic integration programme has been laid down in the **Civic Integration Act**. This Act applies, in principle, to all third-country nationals aged between 16 and 65 years of age from outside the EU who wish to and are permitted to reside in the Netherlands.

Civic integration means that people learn the Dutch language and learn how Dutch society is organised. The objective of the Dutch government is that more immigrants integrate and that they integrate better. Civic integration is regulated in the Civic Integration Act which entered into force on 1 January 2007. Since 2007, 156,000 people have started the compulsory civic integration course.⁷⁴

Since the entry into force of the Civic Integration Act, the issue of residence permits to third-country nationals aged between 16 and 65 years of age from outside the EU has depended on passing a civic integration examination. Exceptions are allowed only on specific grounds. The civic integration examination consists of two sections: a 'Language Examination' and a 'Knowledge of Dutch Society Examination'. The language level required for passing the civic integration examination is A2. This level indicates that the

⁷³ For more information, see www.ind.nl.

⁷⁴ For more information, see www.rijksoverheid.nl.

participant in a civic integration programme masters a reasonable basic level, which enables him to manage in everyday life.

This civic integration examination should not be confused with the civic integration examination abroad, which must be taken at the embassy in the country of origin before a third-country national is permitted to come to the Netherlands for a longer period of time. The civic integration examination abroad is regulated in the Civic Integration Abroad Act.⁷⁵

Participation in a civic integration programme has been compulsory since 1 January 2007. The municipalities have been charged with the duty to organise the civic integration courses. It is their responsibility to help third-country nationals integrate in the Netherlands. In concrete terms, this means that the municipalities actively approach and involve migrants, and offer a suitable civic integration programme. The average programmes last 12 to 18 months and prepare the migrants for the civic integration examination.⁷⁶ In addition, many municipalities offer 'Language Coach Projects', financed by the Ministry of Housing, Spatial Planning and the Environment, in which a voluntary language coach provides individual guidance to the migrant.

The obligation to participate in a civic integration programme does not apply to people who lived in the Netherlands for eight years when they were of school age or who have specific Dutch diplomas, certificates, or proof of having attended an educational programme. People older than 65 years of age and people who come to the Netherlands on a temporary basis (e.g. for the purpose of study or work) are exempted from the obligation to participate in a civic integration programme.⁷⁷

In the proposed amendment to the Civic Integration Act, which was approved by the House of Representatives on 26 April 2012, the migrant is held personally responsible for participating in a civic programme and for financing this programme. A second Bill to introduce an income-contingent loan system to ensure that all migrants will be able to fulfil this responsibility must still be debated by the Senate.

4.1.5 Dutch nationality

There are three ways to acquire Dutch nationality: by operation of law, through the option procedure, and through the naturalisation procedure. In the process of acquiring Dutch nationality, there are two agencies with which the third-country national may have contact: the municipality and the Immigration and Naturalisation Service (IND). Below a description is provided of the roles played by these agencies in the different procedures to acquire Dutch nationality.

75 The civic integration examination abroad tests basic knowledge of the Dutch language and society. Each third-country national aged between 18 and 65 years of age (provided that this person wishes to stay in the Netherlands for a period of more than three months) must pass this examination.

76 During the civic integration programmes, the migrants must learn the skills required for the civic integration examination. The Civic Integration Act sets out what they must know and what they must be able to do. During the lessons, the participants in the civic integration programme are taught Dutch language skills (writing, reading, speaking, and comprehension). They also receive lessons about knowledge of Dutch society.

77 For more exemption grounds, see also <http://www.rijksoverheid.nl/onderwerpen/inburgering/vraag-en-antwoord/wat-is-de-wet-inburgering-en-voor-wie-geldt-de-inburgeringsplicht.html>

By operation of law

Every child who is born to a married Dutch father or mother automatically acquires Dutch nationality at birth, even if the child is born outside the Netherlands. The child who is born to an unmarried Dutch mother also automatically acquires Dutch nationality at birth. This is, however, different in the case of a child who is born to an unmarried non-Dutch mother and a Dutch father. The child acquires Dutch nationality if the child's father acknowledges the child before its birth or before it reaches 7 years of age. This acknowledgement may take place at the municipality where the parents are registered in the Municipal Personal Records Database. If the child is not acknowledged by a Dutch man until its seventh birthday, it may acquire Dutch nationality if the father provides DNA proof of his paternity within a year of that acknowledgement.

The option procedure is the easiest and fastest way of acquiring Dutch nationality. In order to qualify for the option procedure, the third-country national must hold a valid residence permit in nearly all cases. In addition, he must be willing to make the declaration of solidarity during the naturalisation ceremony. With this Declaration, the third-country national declares to be aware of the fact that the laws of the Kingdom of the Netherlands also apply to him.

In order to qualify for the option procedure, the third-country national will have to one of the following categories:

- The optant is of age, was born in the Netherlands, and has lived in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius on the basis of a valid residence permit for an uninterrupted period.
- The optant was born in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius. The optant has lived in the Netherlands on the basis of a valid residence permit for an uninterrupted period of at least three years and he has been stateless since birth.
- The optant is under age, acknowledged by a Dutch national, and has been cared for and brought up by this Dutch national for an uninterrupted period of at least three years.
- The optant is of age and has — since reaching the age of 4 years — lived in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius on the basis of a valid residence permit.
- The optant is of age, is a former Dutch national and has lived in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius for at least one year on the basis of a valid permanent residence permit or with a temporary residence permit with a non-temporary purpose of residence.
- The optant has been married to a Dutch national and has lived in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius on the basis of a valid residence permit for an uninterrupted period of at least 15 years.
- The optant is 65 years of age or older and has lived in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius on the basis of a valid residence permit for an uninterrupted period of at least 15 years.

- The optant is under age and as a result of a Court decision or by operation of law at the time of his birth, is under the joint custody of a non-Dutch father or mother and another person who is a Dutch national. Since the start of this custody, the optant has been cared for and brought up by this Dutch citizen for a period of at least 3 years. The optant does not live in the country of which he holds the nationality.
- The optant was married to a non-Dutch man prior to 1 January 1985 and as a result of this she has lost the Dutch nationality. The optant will have to make an option statement within one year from the dissolution of the marriage.
- The optant was born to a Dutch mother or adopted by a Dutch mother prior to 1 January 1985, and has a non-Dutch father or adoptive father.

If the third-country national wants to make use of the option procedure, he will have to make an option statement before the Mayor (Population Affairs Department of his municipality). The Mayor will subsequently investigate whether the third-country national has been in contact with the police. The third-country national must, in principle, also be able to prove that he holds a valid residence permit. If there are doubts about this, the Mayor may request the IND to confirm that the relevant third-country national holds a valid residence permit. If all conditions of the option procedure have been satisfied, the Mayor will confirm in writing that the third-country national has acquired Dutch nationality. The Mayor will subsequently invite the third-country national to attend the naturalisation ceremony, which is organised by the municipality. This ceremony will focus on the significance of Dutch nationality and the solidarity with Dutch society. The naturalisation ceremony is compulsory. The third-country national will not acquire Dutch nationality until he has attended the naturalisation ceremony and has made the declaration of solidarity. The option procedure takes approximately three months.

The **naturalisation procedure** is the third possibility of acquiring Dutch nationality. In order to qualify for this procedure, a number of conditions must be satisfied. The third-country national must be of age, he must have lived in the Netherlands on the basis of a valid permanent residence permit or a temporary residence permit for a non-temporary purpose of residence for an uninterrupted period of at least five years, and he must have passed the civic integration examination.

The uninterrupted period of five years of residence in the Netherlands does not apply to the following categories:

- The third-country national is married to or is the registered partner of a Dutch national. The third-country national may submit an application after a marriage or registered partnership of a minimum period of three years (any period abroad also counts), and an uninterrupted period of cohabitation. The third-country national may also submit an application if the third-country national has cohabited with a person of Dutch nationality, and has held a valid residence permit, for an uninterrupted period of three years.

- The foreign national is stateless. The third-country national may submit an application after a minimum period of three years.
- The third-country national was acknowledged or legitimised by a person of Dutch nationality and was cared for and brought up by this Dutch citizen for a period of at least 3 years. The third-country national is currently 18 years of age or older. The third-country national may submit an application after three years.
- The third-country national has lived in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius on the basis of a valid residence permit for a total period of ten years, of which the last two years uninterrupted. The third-country national may submit an application after two years.
- The third-country national was adopted in adulthood in the Netherlands, Aruba, Bonaire, Curaçao, Saba, Saint Maarten, or Saint Eustatius by parents of whom at least one parent holds Dutch nationality.
- The third-country national is a former Dutch national. The third-country national used to have Dutch nationality, but has lost it again. In some cases, the third-country national may make use of the option procedure.

If the third-country national is of the opinion that he satisfies all conditions for naturalisation, he may contact the municipality. The third-country national will have to submit several documents, such as a passport and a birth certificate. Together with an employee of the Population Affairs Department of the municipality, the third-country national completes the form 'Application for Naturalisation to Become a Dutch National'. The third-country national will furthermore also have to complete a form by which he declares to be willing to make a declaration of solidarity. In order to assess whether all conditions for naturalisation have been satisfied, an employee of the municipality will verify whether the identity of the third-country national has been established sufficiently and whether he has been in contact with the police. The Mayor will subsequently advise whether or not the third-country national may become a Dutch national on the basis of all documents submitted. The application for naturalisation, accompanied by all file documents and the advice of the Mayor, is subsequently sent to the IND. The IND assesses the application for naturalisation. Once the application has been granted, a proposal to grant Dutch nationality is submitted to His Majesty the King. The King finally grants Dutch nationality. The third-country national does, however, not acquire Dutch nationality until he has attended the naturalisation ceremony and has made the declaration of solidarity in person and in the Dutch language. During the ceremony, the decision on the application for naturalisation is issued to the third-country national. Once a person has finally acquired Dutch nationality through the naturalisation procedure, he is, in principle, required to renounce the original nationality. The naturalisation procedure takes a maximum period of one year.⁷⁸

⁷⁸ For more information, see <http://english.ind.nl/residencewizard/>.

4.1.6 *Access to the labour market*

Dutch labour market policy is aimed towards the following migration-related objectives:

- To admit persons of whom it may be expected that they contribute to prosperity and to the growth in prosperity through their employment activities;
- To protect the domestic labour market by discouraging displacement;
- To protect national labour relations, and to combat unfair competition by ensuring that labour migrants are paid in line with the market and receive at least the statutory minimum wage;
- To prevent and combat illegal employment;
- To provide maximum guarantee with regard to the temporary residence of non-highly skilled migrants from outside the EU;
- To prevent labour migrants from relying on social security benefits;
- To guarantee a minimum administrative burden for employers.

These policy objectives result in a demand-driven admission policy to the labour market: a condition for admission is that the third-country national has a job at the time of submitting the application for a residence permit. The admission procedure distinguishes between a selective admission of non-highly skilled migrants and the encouragement of the migration/admission of highly skilled migrants. The legislative framework is the Dutch Foreign Nationals (Employment) Act. The Netherlands Employees Insurance Agency (UWV) is responsible for the implementation of this Act, while the Social Affairs and Employment Inspectorate (Inspectorate SZW) is responsible for enforcement. The most important instrument in labour market policy is the work permit, which is applied for by and granted to the employer. An employer requires a work permit if it wishes to employ a labour migrant from a country to which the free movement of employees does not apply, and which is not exempt from the work permit requirement (see also Subsection 4.2). Another important instrument is the administrative fine that may be imposed by the Inspectorate SZW on an employer who has illegally employed one or more third-country nationals.⁷⁹

4.1.6.1 *Asylum*

Holders of an asylum residence permit are permitted to perform paid work and do not require a work permit. Asylum seekers who are engaged in an asylum procedure have access to the labour market if the third-country national cannot be removed and if he has received reception facilities from the Agency for the Reception of Asylum Seekers (COA) or from the municipality, for a period of more than six months. Asylum seekers are permitted to perform paid work for 24 weeks in a period of 52 weeks. Asylum seekers who work as an artist, musician, film crew member, or technician to support musicians and artists are permitted to work for 14 weeks in a period of 52 weeks. The employer must first submit an application for a work permit to UWV WERKbedrijf (the work placement branch of the Employee Insurance Agency). Asylum seekers who are under 18 years of age are also permitted to work, provided that the employer complies with the rules for youth labour.⁸⁰

⁷⁹ *Parliamentary Papers II* 2009/2010, 32144, no. 1.

⁸⁰ For more information, see www.rijksoverheid.nl.

4.1.6.2 *Migration*

An employer may bring an employee to the Netherlands as a labour migrant, as a highly skilled migrant, or as a research worker. In addition to the migrants who have come to the Netherlands for the purpose of work, there are also migrants who have come to the Netherlands for other purposes of residence, for instance for the purpose of family reunification. In family reunification procedures, the position of the spouse, partner or minor children depends on the position on the labour market of the migrant already admitted. The right of the family members to perform work is usually the same as that of the migrant who has already been admitted.

Below is a description of the procedure for migrants who have specifically come to the Netherlands for the purpose of work. The procedure is described for migrants who are obliged to hold an MVV. Migrants who are not obliged to hold an MVV must submit an application for a temporary regular residence permit for the relevant purpose of residence to the IND. If the migrant is also required to hold a work permit, an application for this permit will have to be submitted separately to the UWV WERKbedrijf. These applications are subject to the rules for non- asylum procedures.

A **labour migrant** is a foreign employee who comes to the Netherlands to work in paid employment. An employer may bring a foreign employee to the Netherlands as a labour migrant if the employer has been granted a work permit for the relevant labour migrant. The employee must furthermore have an employment agreement in order to be able to prove that he will perform work in paid employment. The employee's level of income must at least be equal to the statutory minimum wage.

For a labour migrant who is obliged to hold an MVV to be able to make use of the labour migrant procedure for access to the Dutch labour market, the employer must submit a request for advice preceding the actual MVV application to the IND. The employer must simultaneously submit an application for a work permit to UWV WERKbedrijf. If the employer is not granted a work permit, the IND always refuses the request for advice preceding the actual MVV application. If UWV WERKbedrijf decides to issue a work permit, the IND decides whether it will issue a positive advice to the employer on the basis of the above-mentioned conditions. In principle, the employer will receive a decision on the request for advice preceding the actual MVV application within four weeks of the decision on the work permit. If the decision on the issue of the MVV is positive, as well, the employee can submit an MVV application to the Dutch diplomatic mission. Once the employee holds an MVV and has been admitted to the Netherlands, the employee must personally submit an application for a temporary regular residence permit to the IND. The employee will receive a decision on this application within six months. In practice, this decision period is shorter, as the substantive assessment was made already in the application procedure for an MVV. The residence permit of the employee is granted for the same period as that of the work permit.

The legislative framework regarding labour migrants is the Dutch Foreign Nationals (Employment) Act

In order to be admitted to the labour market, the third-country nationals must satisfy specific conditions. In many cases, admission not only requires the third-country national to hold a valid residence permit, but also requires the third-country national's employer to have a work permit. A work permit grants a foreign employee access to the Dutch labour market for a specific period of time. The regulations for the work permit have been laid down in the Foreign Nationals (Employment) Act.

An employer is obliged to apply for a work permit for employees from the EU Member States of Bulgaria and Romania,⁸¹ or for employees with the nationality of a country outside the European Economic Area (EEA). In a number of cases, employees from outside the EEA are exempt from the obligation to hold a work permit. This is, for instance, the case if the employee holds a residence permit with the endorsement 'unrestricted labour' and a work permit is not required, or if the employee has a sticker with such an endorsement in his passport. A work permit is also not required if a self-employed person holds a residence permit to work on a self-employed basis, or if the employee is a highly skilled migrant or a research worker.⁸²

UWV WERKbedrijf determines which work permit is granted to an employer for the foreign employee. A work permit is valid for a maximum period of three years. There are three types of work permits:

Types of work permits	Description
Work permit for a maximum period of three years	This work permit is valid for a maximum period of three years. A foreign employee who has had a residence permit for work in paid employment for an uninterrupted period of three years will subsequently qualify for a residence permit with the endorsement 'unrestricted labour'. In those cases, a work permit is not required.
Work permit for a period of less than three years	This type of work permit can be broken down in: - A temporary, unextendable work permit for temporary, short-term activities. This work permit is valid for a maximum period of 24 weeks; - A temporary, unextendable work permit for specific jobs.
Work permit subject to specific rules	This work permit is granted subject to specific rules. These rules may prescribe, for instance, that the terms of employment or the working conditions must be improved.

The Foreign Nationals (Employment) Act provides for the cases in which a work permit must be refused. In practice, the most important ground for refusing a work permit is the presence of the availability of the priority workforce in the Dutch labour market. This means that the need for labour in the Netherlands must be satisfied as far as possible by employing Dutch nationals, EU/EEA nationals, and third-country nationals with the endorsement 'unrestricted labour' on their residence permit.⁸³ UWV WERKbedrijf

⁸¹ For the first 12 months of the employment.

⁸² Please refer to the website of UWV WERKbedrijf for other cases in which a work permit is not required. www.werk.nl.

assesses whether vacancies can be filled by labour from this priority workforce. The employer is obliged to notify the vacancy to an office of UWV WERKbedrijf at least five weeks prior to submitting the application for a work permit with a view to fill this vacancy from priority workforce. If vacancies are difficult to fill, the employer must make every effort for a minimum period of three months before applying for a work permit. Such recruitment activities include, for instance, recruitment through the Internet, engagement of recruitment agencies, and the placement of job advertisements in newspapers and/or professional journals. It is also possible to engage UWV WERKbedrijf in seeking a suitable candidate in the Netherlands and/or Europe. UWV WERKbedrijf uses the European Employment Services (EURES). EURES is a European network of more than 700 employment officers. The employer is, however, also obliged to personally seek a suitable candidate. If an employee having priority is able to satisfy the requirements set by the employer through schooling or extra training within a reasonable period of time, this may be a reason for UWV WERKbedrijf to refuse a work permit for a third-country national. What is reasonable depends on the job and the profession.⁸⁴ A work permit will furthermore be refused if the employer fails to pay in accordance with the wages negotiated or the Minimum Wage and Minimum Holiday Allowance Act, and fails to provide suitable housing.

Highly skilled migrant

A highly skilled migrant is a foreign employee who comes to the Netherlands to work in paid employment. Employers do not need a work permit for a highly skilled migrant. An employer may bring an employee to the Netherlands as a highly skilled migrant if it is able to submit a certificate of registration at the Chamber of Commerce and a payment history report from the Tax and Customs Administration, and if it has signed a declaration for the admission of highly skilled migrants. In this declaration, the employer assumes a number of responsibilities with respect to the employee, for instance, that the employer will guarantee the fulfilment of financial obligations of the employee, so that the costs of the employee's residence will not become a burden on the Dutch government. The IND determines whether the declaration is in order. If this is the case, the IND will admit the employer to the Highly Skilled Migrant Scheme. Highly skilled migrants are subject to the wage criterion. The employee must earn a gross income of at least € 51,239 (if he is 30 years of age or older) or € 37,575 (if he is under 30 years of age).⁸⁵ That this criterion is met must be demonstrated by an employment agreement and an Employer's Declaration. The wage criterion does not apply to an employee who is appointed in the Netherlands for conducting scientific research, or for an employee who is an assistant physician. The employee's income must at least be equal to the social assistance benefit level.⁸⁶

83 Kuijer, A. (ed.), 2005.

84 For more information, see www.werk.nl.

85 These amounts are applicable for 2012. The amounts are index-linked every year.

86 For single persons, the monthly amount is 1,012.65, without holiday allowance, or the monthly gross amount for families is € 1,446.60.

Prior to submitting an application for a Regular Provisional Residence Permit (MVV), the employer is obliged to submit a request for advice preceding the actual MVV application to the IND Office for Labour and Highly Skilled Migrants. In principle, the employer will receive IND's advice to the request within two weeks. If a positive advice is issued, the employee can submit an MVV application to the Dutch diplomatic mission. Once the employee holds an MVV and has been admitted to the Netherlands, the employee can personally submit an application for a temporary regular residence permit to the IND Office for Labour and Highly Skilled Migrants. The rest of the procedure is equal to the procedure followed by labour migrants, but the decision on the application in respect of highly skilled migrant is, in principle, made within two weeks. The residence permit of a highly skilled migrant will be issued for the duration of the employment agreement, with a maximum period of five years.

In order to facilitate the admission and residence of highly skilled migrants and their family members in the Netherlands, the IND — in cooperation with several municipalities — established the so-called **Expat Centers**.⁸⁷ The purpose of these centres is to enable the highly skilled migrant and the family members who will join them to register in the Municipal Personal Records Database (GBA) and to collect the residence permit by one visit to this Expat Center. The highly skilled migrant is consequently no longer required to visit two separate government agencies. The highly skilled migrant can furthermore also go to the Expat Center for information about matters such as housing, parking, moving, health care, and education for the children. The Expat Centers are located in, among other things, Amsterdam, Rotterdam, The Hague, and Eindhoven.

There are two procedures: the one-stop-shop procedure and the two-stop-shop procedure. The one-stop-shop procedure enables highly skilled migrants to register in the GBA and to collect their residence permit immediately after their entry into the Netherlands. The advantage of this procedure is that the employer can submit an application for a residence permit while the employee is still abroad. In addition, it is currently also possible to complete the entire residence procedure — from the moment of submitting of the application for a residence permit up to and including the issue of the residence permit and the registration in the GBA — in four weeks.

The two-stop-shop procedure implies that the highly skilled migrant enters the Netherlands and starts working within two weeks from the submission of the application for a residence permit by the employer. Because there is such a short period between the application and the entry into the Netherlands, the residence permit is not yet ready. An advantage of this procedure is that the highly skilled migrant will receive both the GBA registration and a written decision on his application for a residence permit by one visit to the Expat Center after his entry into the Netherlands. This decision already authorises the person concerned to work. It is furthermore possible to deal with part of the residence procedure - from the moment of submitting the application for a residence per-

87 In July 2012, there were 4 Expat Centers in the Netherlands. These Expat Centers employ more than 75 people. The largest Expat Center is in Amsterdam.

mit up to and including the issue of the written decision and the GBA registration — in approximately two weeks. The entire procedure ends when the highly skilled migrant has received his residence permit at the Expat Center.

EU Blue Card

The Netherlands transposed the EU Blue Card Directive (2009/50/EC) into national legislation, which entered into force on 19 June 2011.⁸⁸ Since this date, it has been possible to rely directly on this Directive. This new Directive provides for the conditions of entry and residence for a period of more than three months of a person who performs highly qualified activities as a holder of an EU Blue Card and that of his family members. The purpose of this Directive is to make the EU more attractive to highly qualified workers from around the world, and to consolidate its competitiveness and economic growth. In order to be eligible for an EU Blue Card in the Netherlands, the employee must have highly qualified employment for a minimum period of one year and earn a gross annual salary of at least € 60,000. The employee will be considered highly qualified if he or she has completed at least a higher education programme, whereby the studies needed to acquire the certificate lasted at least three years. This foreign certificate will be compared to the Dutch educational system and Dutch professional requirements must be met. In addition, the employer may not have received a fine for breaching the Dutch Foreign Nationals (Employment) Act or for not paying (or not paying enough) PAYE tax or national insurance contributions.

As the above-mentioned national Highly Skilled Migrants Scheme will continue to exist as well, the highly skilled migrant or the employer can choose between residence on the basis of national policy and residence with an EU Blue Card on the basis of the European Directive. Whereas in the national Highly Skilled Migrants Scheme, in principle, only the salary to be received is considered, the Directive also sets a qualification requirement. In addition, the issue of an EU Blue Card is subject to a higher wage criterion. It is consequently easier to be granted residence in the Netherlands on the basis of the national Highly Skilled Migrant Scheme. The advantages of the EU Blue Card are that it facilitates residence and employment in a different EU Member State and that it is easier for family members of the highly skilled migrant to be eligible for an independent residence permit for 'continued residence'. Another advantage is that, in addition, the highly skilled migrant who has worked in different Member States may be eligible for the status of long-term third-country national resident. If the conditions of the Directive are met as well, it may be interesting to opt for the EU Blue Card. The latter will apply, in particular, to companies with offices in several Member States that want to be flexible in relocating their highly qualified staff, as well as to the highly qualified employee who prefers to move more freely within Europe.

Research worker

European Directive 2005/71/EC facilitates the admission of researchers by means of an admission procedure which is unrelated to the legal relationship between the research-

cher and the research organisation. In the Netherlands, three categories of research workers are distinguished.

In order to be able to come to the Netherlands as an unpaid research worker, the educational establishment must have been approved, and it must enter into a hosting agreement with the third-country national. The entry procedure is a sponsor procedure, and can therefore only be initiated through the intermediary of the educational establishment. The educational establishment will have to submit the request for advice in connection with the issue of an MVV to the IND.⁸⁹ In support of the application, the unpaid Doctoral candidate is obliged to submit proof of having been granted a scholarship. In addition, documents must be submitted showing that the Doctoral candidate has sufficient means of existence to pay for his stay in the Netherlands. The Doctoral candidate does not require a work permit to perform the research in order to obtain the doctorate, but he is not permitted to perform any other work during his stay in the Netherlands. The residence permit will be granted on the restriction 'residence as an unpaid research worker'.⁹⁰

The IND aims to have the advice regarding the request to issue an MVV ready within 2 weeks. Pursuant to Directive 2005/71/EC, the period of validity of the residence permit is at least one year and not more than five years. Any family members will be granted a residence permit with the same period of validity.⁹¹

It is also possible to perform paid research in order to obtain the doctorate. This group of research workers are considered highly skilled migrants for Dutch policy purposes. Pursuant to the Foreign Nationals (Employment) Act (Implementation) Decree, highly skilled migrants are permitted to work in the Netherlands without a work permit. Contrary to other highly skilled migrants, this group is not subject to a wage criterion.⁹²

Labour migration policy does, however, also specify research workers that do require a work permit. The research workers concerned are:

- Trainee research assistants and trainee researchers at a research university;
- Third-country nationals who come to the Netherlands in the post-Doctoral phase to perform specific research tasks in current research projects for a maximum period of two years;
- Highly qualified researchers who come to the Netherlands to perform research activities at the recommendation of the Royal Netherlands Academy of Arts and Sciences on the basis of a temporary appointment.

These research workers will be granted a temporary residence permit subject to the restriction of 'work as an employee'.⁹³

89 Aliens Act Implementation Guidelines 2000, Part B, Chapter 18, Section 1

90 Aliens Act Implementation Guidelines 2000, Part B, Chapter 5, Section 4.6.4

91 Aliens Act Implementation Guidelines 2000, Part B, Chapter 18, Sections 1 and 2

92 Aliens Act Implementation Guidelines 2000, Part B, Chapter 15, Section 3

93 Aliens Act Implementation Guidelines 2000, Part B, Chapter 5, Section 4.6.3

4.1.7 *Departure*

The term 'departure' means the third-country national's voluntary or forced departure from the Netherlands. The Aliens Act 2000 also uses the term 'removal'. This term is used in all cases of 'removal from the Netherlands with the aid of the police'. This implies that it the term 'removal' is not used in situations that a third-country national is provided the opportunity to leave the Netherlands in a manner preferred by him. As the same departure procedures apply to all third-country nationals in the Netherlands, this Sub-section does not distinguish between asylum and migration.

The legal obligation to leave the Netherlands arises at the moment that the lawful residence ends. For third-country nationals who have never had lawful residence in the Netherlands, and who were consequently staying illegally in the Netherlands, this legal obligation arises at the moment at which they acquired unlawful entry into the Netherlands. For third-country nationals who have submitted an application for a residence permit, but whose application has been refused, the legal obligation arises after the refusal of the application. If the third-country national has appealed against this refusal, the legal obligation arises after the appeal proceedings have ended and the third-country national has lost the case. If the third-country national subsequently appeals in cassation, the third-country national is not permitted to await this appeal in the Netherlands. The third-country national must leave the Netherlands voluntarily, in general within four weeks.⁹⁴ However, situations occur in which the third-country national does not leave the Netherlands voluntarily and may therefore be removed.

The Repatriation and Departure Service (DT&V) is responsible for the preparation, the facilitation, and the organisation of voluntary and forced departure of third-country nationals who are not entitled to residence in the Netherlands. The DT&V coordinates the departure from the Netherlands of:

- Third-country nationals who have been apprehended in the context of internal supervision of third-country nationals (mobile or otherwise);
- Third-country nationals who have been refused entry in the context of border control;
- Third-country nationals whose residence permit has been withdrawn;
- Asylum seekers who have exhausted all legal remedies and who must leave the country.⁹⁵

The DT&V assists the third-country national intensively in arranging his departure from the Netherlands. The DT&V considers which possibilities the third-country national has with respect to leaving the country, and conducts interviews with the third-country national in order to encourage him to leave the Netherlands voluntarily.

Voluntary departure

When the third-country national does not have, or no longer has lawful residence in the Netherlands, he is personally responsible for his departure from the Netherlands. In this context, he can receive support from the International Organisation for Migration (IOM) in the Netherlands and several non-governmental organisations. In July 2012, IOM

⁹⁴ Aliens Act Implementation Guidelines 2000 (A), Chapter 4.

⁹⁵ For more information, see <http://english.dienstterugkeerenvertrek.nl>.

employed 76 employees.⁹⁶ The IOM supports third-country nationals in voluntary departure or resettlement. IOM offers this support on the basis of the REAN programme (Return and Emigration of Aliens from the Netherlands). This programme is financed from the DT&V. The REAN programme is aimed at implementing a humane and effective policy for the voluntary departure or resettlement of specific categories of third-country nationals. The IOM gives information, handles applications for departure, arranges the trip, and provides guidance during the departure. If the departure or resettlement can actually be realised, the IOM is also responsible under the REAN programme for making financial contributions towards the initial living expenses upon return.

Before it is decided whether the third-country national qualifies for the REAN programme, he first receives information from the IOM about the support he may obtain from the IOM during his departure from the Netherlands. If the third-country national decides to make use of this support, he submits an application for return to the IOM. At the same time, the third-country national signs a form by which he declares not to object to the exchange of information among the IOM, the IND, and the DT&V with respect to data that is relevant to his departure. The IOM will subsequently verify with the IND whether the third-country national satisfies the conditions for eligibility for support from the REAN programme. The IND is asked permission to allow the third-country national concerned to leave with the aid of the IOM. The decision to grant or deny this permission is made by the IND in consultation with the DT&V. The IND informs the DT&V about the decision on whether or not permission is granted. If permission is granted, the third-country national will be informed that he may leave on the basis of the REAN programme. The IOM will arrange the trip and establish the amount of the financial contribution towards the initial living expenses upon return. The third-country national is personally responsible for obtaining the travel documents for his return to the country of origin, but he may request the IOM or the DT&V to act as an intermediary. The IOM will deal with the exit formalities at the airport. If the third-country national has received a custodial order, or if the third-country national's departure takes place from aliens detention, the Royal Netherlands Marechaussee is responsible for the third-country national's transfer to the IOM. The IOM will notify the IND, the DT&V, and — if applicable — also the Royal Netherlands Marechaussee in writing that the third-country national has left with the support from the IOM.

In addition to this support in the actual departure, former asylum seekers who wish to leave the Netherlands voluntarily may — under specific conditions — also invoke more comprehensive support in return to and resettlement in the country of origin. Financial reintegration assistance is provided in the Return and Reintegration Regulation, which is financed from the Ministry of Foreign Affairs and implemented by the IOM. In addition, the possibility of '*in natura*' assistance is provided pursuant to one of the projects for voluntary permanent return and reintegration of asylum seekers. These projects are financed from the Ministry of Foreign Affairs and implemented by several Dutch NGOs and the IOM.

Removal

If a third-country national does not have or no longer has lawful residence in the Netherlands and does not leave voluntarily, he may be removed and placed in aliens detention while awaiting his removal. Removal is effected by transfer to the foreign border authorities or by placement aboard an aeroplane or ship of the same airline or shipping company that was used by the third-country national to enter the Netherlands. It is also possible that the third-country national is removed to a country of which it may be assumed that he will be granted entry there. If the third-country national does not hold a valid or expired travel document, the DT&V will request the diplomatic mission of the country of origin to issue a replacement document, a so-called *laissez-passer*.

The removal is usually effected through one of the removal centres.⁹⁷ The purpose of a removal centre is to remove third-country nationals to the country of origin in the short term. The third-country nationals are placed in aliens detention, which means that they are locked up and cannot leave the centre. The two removal centres in the Netherlands are located at Amsterdam Airport Schiphol and Rotterdam Airport. Third-country nationals are removed individually or in groups (by government flight).

Return Directive

Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (hereinafter the 'Return Directive') was published on 24 December 2008. The Netherlands should have had transposed the Return Directive into national law by 24 December 2010. The Bill implementing the Return Directive was submitted to the House of Representatives in June 2010. Partly due to the fact that the Council of State had given a negative opinion on the Bill, the date of 24 December 2010 was not met. In December 2010, partial implementation was effected insofar as amendments were not required.

By now, the legislative procedure has been finalised. The Senate adopted the Act on 13 December 2011. The Act entered into force on 31 December 2011.

The Return Directive applies to third-country nationals who are staying illegally on the territory of a Member State. The Act distinguishes between the return decision and the entry ban.

A return decision is an administrative or judicial decision or act, stating or declaring the residence of a third-country national to be illegal, and imposing or stating an obligation to return.

A return decision is imposed in the following manner in the following two cases:

1. By the Aliens Police or the Royal Netherlands Marechaussee, if a third-country national is found to be illegally present in the Netherlands.
2. By the IND, as a result of a decision with multiple consequences (asylum and migration).

The basic principle of the legislative amendment is that a return decision stating the relevant departure period is imposed only once. Since 1 April 2001, nearly all decisions

refusing an application for a residence permit also counted as return decisions.⁹⁸ A return decision may be appealed directly to the court.

After a return decision has been issued against the third-country national, he is obliged to leave the Netherlands voluntarily, in principle, within four weeks. In a number of situations, this departure period may be shortened, or the court may decide that the third-country national must leave the Netherlands immediately.

Third-country nationals who have received a return decision and who do not leave voluntarily may be detained in aliens detention for a maximum period of six months. If there is prospect of removal/no prospect of removal, the period may be extended by twelve months.

An entry ban is an administrative or judicial decision or act prohibiting entry into and residence on the territory of all Member States for a specified period, accompanying a return decision. In principle, an entry ban is imposed on all third-country nationals who failed to comply with a previous departure period, or on those third-country nationals who must leave the Netherlands immediately. An entry ban may be appealed directly to the court.

The entry ban may be compared to the exclusion order pursuant to Section 67 of the Aliens Act 2000. With the entry into force of the new Act, the exclusion order is theoretically possible only if the entry ban cannot be imposed. As a result of this, the exclusion order can, in principle, be imposed only on Community nationals.

A violation of the entry ban is punishable. If an entry ban has been imposed in connection with the third-country national posing a danger to public order and national security, the violation constitutes a serious offence. In all other cases, violation of the entry ban constitutes a minor offence.⁹⁹

4.2 Links with other policy areas

At the various stages in the migration process, the asylum and migration policies are linked with other policy areas. In the political and social debates about asylum and migration policies, reference is made to issues that fall within the scope of integration policy, labour market policy, and migration and development policy. This subsection consequently provides brief descriptions of these links with other policy areas.

4.2.1 *Labour market policy*

If employers are unable to find employees in the Netherlands, they will look for employees abroad. For the entry of staff from outside the EU and the European Economic Area (EEA) (or from the new European Member States of Bulgaria and Romania), the work permit is an important tool. Employers who want to employ staff in the Netherlands

98 Administrative Jurisdiction Division of the Council of State, 21 March 2011, 201100493/1/V3, National Case-Law Number BP 9281.

99 Aliens Act Implementation Guidelines 2000, Chapters A3 and A4.

from outside the EU/EEA (or from Bulgaria and Romania) will have to apply for a work permit through the Netherlands Employees Insurance Agency (UWV). The basic principle for granting work permits is that the labour supply in the Netherlands and the European Union is sufficient.¹⁰⁰ The UWV will, for instance, examine closely whether people in the Netherlands or in Europe are available to do the job, and whether a company has examined this sufficiently. If an employer has failed to do so to a sufficient degree or if the salary offered is too low, the permit will be refused. Highly skilled migrants do not require work permits.

The Dutch labour market is protected by the Foreign Nationals (Employment) Act. The UWV is responsible for the implementation of this Act, and the Social Affairs and Employment Inspectorate (Inspectorate SZW) is responsible for the enforcement thereof. In the Netherlands, the entry policy towards the labour market is demand-driven. At the time of submitting the application for a work permit, the relevant labour migrant must already have a job. The applications for work permits (or residence permits in the case of highly skilled migrants) are submitted by the employer.

Dutch labour market policy is based on the following key objectives:

1. Highly qualified labour migrants from outside the EU are welcome if, through their knowledge, they make a contribution to the Dutch knowledge economy (Highly Skilled Migrant Scheme).¹⁰¹
2. Although the number of work permits has decreased for several years, the government has indicated that it intends to reduce the number of work permits still further.¹⁰²
3. By ensuring that labour migrants are paid in line with the market and receive at least the statutory minimum wage, the government attempts to protect national labour relations and to tackle unfair competition.¹⁰³
4. Illegal employment will lead to a situation whereby the domestic labour supply is put at a disadvantage or pushed aside. This is therefore diametrically opposed to the objective of the government to help as many job seekers in finding jobs as possible. The Foreign Nationals (Employment) Act therefore prohibits employers to employ persons who do not have free access to the Dutch labour market without work permits. The Inspectorate SZW is responsible for the enforcement of the Foreign Nationals (Employment) Act. Compliance with the Foreign Nationals (Employment) Act is monitored by means of inspections at companies.

4.2.2 *Integration policy*

In the Netherlands, the Directorate for Integration and Society is responsible for a coherent and nation-wide integration policy. The basic principle in this context is the citizen's own responsibility and self-reliance.

100 *Parliamentary Papers II* 2010/2011, 32144, no. 5.

101 *Parliamentary Papers II* 2010/2011, 32144, no. 5.

102 *Parliamentary Papers II* 2010/2011, 29407, no. 128.

103 *Parliamentary Papers II* 2010/2011, 17050, no. 402.

This Department has three main objectives:

- Civic integration of newcomers and settled immigrants
- Social participation of migrants
- Social and cultural integration of migrants

In the past few years, the authorities have developed an integration policy in interaction with changed social and political perceptions, and with an eye for the concerns and needs of citizens. This has resulted in an integration policy which puts more emphasis on the importance of a common basis and recognisable foundation. As a corollary, more compulsory elements for newcomers have been introduced, such as civic integration, tests of knowledge of the Dutch language and society prior to admission, and the renouncement of the non-Dutch nationality upon naturalisation.

For information about the integration policy, see also Subsection 4.1.4.

4.2.3 *Migration and development policy*

Since 2000, the focus on the links between migration and development has intensified. To an increasing degree, migrants are regarded as a potential source of development in their countries of origin, because of their actions in this regard, which include sending money and using their competencies for socio-economic and political development of their countries of origin, whether or not this is linked to their permanent or temporary return.

In 2008, the Netherlands established the following six policy priorities for the purpose of migration and development policy.

- To pay more attention to migration in the development dialogue and to development in the migration dialogue;
- To promote the institutional development in the area of migration management;
- To encourage circular migration/brain gain;
- To strengthen the commitment of migrant organisations;
- To strengthen the relationship between money remittances and development;
- To promote permanent return and reintegration.

The Rutte-Verhagen government also adopted these priorities as the basic principle for the policies. In line with the Coalition Agreement, however, the emphasis was on the themes of return, including reception and reintegration of unaccompanied minors in the countries of origin, and protection and reception of refugees in the region of origin.¹⁰⁴

In all policy priorities, explicit consideration is given to the promotion of equal opportunities and equal rights for women, and to human rights.

5 ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS

Practical experience shows that the current migration system is capable of improvement. The current form of the migration system will therefore be amended in the near future. For several years now, it has been possible to distinguish developments that point to significant changes in migration policy. The most important amendments to the asylum procedure were implemented in the course of 2010 with the entry into force of the Improved Asylum Procedure. See Subsection 4.3.1.

The entry procedure for migrants will also be amended in the near future (upon the entry into force of the Modern Migration Policy Act).

The general starting point of the current entry system is restrictiveness. This implies that, in principle, migrants will not be granted admission to the Netherlands, unless this is required by international obligations, or if the presence of the migrant serves essential interests of the Netherlands, or if compelling humanitarian grounds exist. As migrants who are welcome in the Netherlands are also confronted with this restrictiveness, Modern Migration Policy should not only be restrictive, but also selective.¹⁰⁵ Therefore, it is the government's ambition to realise a sustainable migration policy that will provide a fast and efficient entry to those migrants needed most by the Netherlands. Below is a framework discussion of the intended amendments.

Modern Migration Policy

In May 2006, the former government drafted the policy memorandum 'The Route to Modern Migration Policy' (*Naar een Modern Migratiebeleid*), which proposed a drastic revision of the current entry system (with the exception of the asylum-related component). In June 2008, the former State Secretary for Justice submitted the government proposal - in which this policy framework had been elaborated further - to the House of Representatives. On 16 February 2010, the House of Representatives agreed to the Bill. The Senate adopted the Bill on Modern Migration Policy on 5 July 2010.¹⁰⁶ The Modern Migration Policy Act relates, in particular, to legal purposes of stay, such as work, study, and family reunification.¹⁰⁷ The new Act was supposed to have entered into force on 1 January 2011. Due to a delay in the introduction of a new computer system at the Immigration and Naturalisation Service (IND), however, this deadline was not met. This computer system is required for the implementation of the Modern Migration Policy Act. In 2011, the Minister informed the House of Representatives about the state of affairs of this new computer system.¹⁰⁸ Until now, a new date for the entry into force of the Act was not yet known. In anticipation of the formal implementation of the Modern Migration Policy Act, several pilot projects have been carried out in such a way that the principles of this Act are applied as much as possible. In this way, both the IND and its clients have gained experience with the new elements of the Modern Migration Policy Act,

¹⁰⁵ *Parliamentary Papers II* 2008/2009, 32052, no. 3.

¹⁰⁶ Dutch Bulletin of Acts and Decrees 2010 no. 290.

¹⁰⁷ For a more detailed description, please refer to the Annual Policy Reports of 2010 and 2011.

¹⁰⁸ *Parliamentary Papers II* 2010/2011, 30573 no. 66 and *Parliamentary Papers II* 2011-2012, 30573, no. 77.

including ordinary and recognised sponsorship, the Entry and Residence Procedure, the rights and duties of the sponsor and third-country nationals as amended, and information exchange with the cooperating organisations.¹⁰⁹ So far, the pilot projects have provided a positive picture of Modern Migration Policy and have shown that the policy formulated is practicable in broad outline.

Simplification of purposes of residence

In order to clearly show the basic principle of selectivity in addition to restrictiveness, it has been decided to implement a model of eight clusters. The residence permits will be granted on the basis of one out of the eight clusters, and each cluster comprises a uniform package of rights and obligations. These clusters are:

Cluster I:	Exchange (young people who participate in a cultural exchange programme, including au pairs)
Cluster II:	Study (higher education and secondary education)
Cluster III:	Labour temporary (seasonal work and work-study programmes)
Cluster IV:	Labour regular (including labour of a religious or philosophical nature)
Cluster V:	Knowledge and talent (highly skilled migrants and research workers)
Cluster VI:	Relatives and family (family reunification and family formation)
Cluster VII:	Temporary humanitarian reasons
Cluster VIII:	Special residence (humanitarian reasons of long duration and economically non-active migrants)

Within these clusters, the residence permits may be granted under different restrictions (as few as possible). The period of validity of the residence permit will correspond as much as possible with the intended period of residence of the migrant. This will avoid unnecessary extension procedures.

The labour market position of the permit holder depends on the cluster on the basis of which the residence permit is granted. Migrants with the same residence restrictions will be given the same labour market position. If this position requires a work permit, this requirement will continue to apply if the migrants switch employers.

Simplified procedures

The current separate applications for a Regular Provisional Residence Permit (MVV) and a residence permit will be integrated. They will be replaced by one application for admission and residence. This application can be used to acquire both a visa and a residence permit.

Sponsor system

In addition, the IND will work with a sponsor system in the future. The sponsor currently does not have an independent and statutory position, even though the sponsor is often the reason for the migrant to come to the Netherlands and acts as a guarantor for the

¹⁰⁹ The following pilot projects were launched: Au Pair Project, Highly Skilled Migrant Project, Student Project, and Cultural Exchange Project.

costs arising from the residence. In the new sponsor system, the sponsor is assigned a large responsibility in the admission of migrants, which responsibility will be laid down by law. One of the sponsor's statutory duties is to provide timely, correct and full information about the migrant for whom the sponsor is responsible. In order to accelerate the admission process, a system for the recognition of sponsors will be introduced. A sponsor is recognised once the sponsor has proved to be a reliable partner. The recognition as a sponsor facilitates an accelerated handling of the application for a residence permit, in which the targeted decision period is two weeks. This recognition system will be limited to three types of sponsors: corporate sponsors who wish to submit admission and residence applications for highly skilled migrants; sponsors of students (i.e. educational institutions); and sponsors of young people who participate in a cultural exchange programme.

Monitoring and enforcement

Amendments to the monitoring and enforcement instruments will result in prompt and effective detection of fraud and misuse. Important amendments are the sponsor's obligation to provide information, and the retention obligation. This enables the authorities to monitor the migrant during the period that he must have a sponsor in order to be permitted to reside in the Netherlands. A sponsor who fails to fulfil the obligation to provide information may receive an administrative fine. This applies to both corporate sponsors and private sponsors. By means of an administrative pecuniary debt, specific costs incurred by the authorities for the migrant's forced return may be recovered from the sponsor. Another sanction is, in conclusion, the withdrawal of the status of recognised sponsor.

The IND and the police will be responsible for the internal supervision of foreign nationals in the new system. The IND will be authorised to enforce the new administrative sanctions, and it will monitor the sponsor's obligation to provide information.¹¹⁰ Many organisations are involved in the process of monitoring - and enforcing sanctions against - migration-related crime and labour market fraud, including the IND, the police, and the Inspectorate SZW. These organisations often cooperate, with each organisation operating from its own specific duties and expertise.¹¹¹ It is expected that compliance with the rules will be promoted by the combination of the advantages provided to bona fide companies and institutions, and the sanctions enforced on those who fail to comply with those rules.

¹¹⁰ *Parliamentary Papers II* 2007/2011, 30573, no. 10.

¹¹¹ INDIAC – NL EMN NCP (2011).

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Immigration and Naturalisation
Service
*Ministry of the Interior and
Kingdom Relations*



The EMN was established via Council Decision
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The European Migration Network (EMN) has been set up by the Council of the European Union. The EMN collects up-to-date, objective, reliable and where possible comparable information on migration and asylum. The EMN publishes reports on a variety of subjects in the field of asylum and migration. The establishment of the EMN is consistent with the aim of the EU to establish an effective asylum and migration policy.

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